

POLICE CORRUPTION

The Good, the Bad & the Bent - An article by Aziz Rahman, Solicitor and Jonathan Lennon, Barrister

On 4th December 1997 the former Metropolitan Police Commissioner, Sir Paul Condon (now Lord Condon) gave evidence to House of Commons Home Affairs Committee and accepted that there were corrupt officers in his force - he numbered them at around 100-250. The Met has done much since to rid its force of corruption but it is too much to expect any force to have no problems at all with 'bent coppers'. In this article we take a brief look at the law, the reasons why officers become criminals and the legal arguments that can be mounted by those on the wrong end of police corruption.

LAW

It is a common-law offence known as misconduct in public office to offer or accept a bribe but, generally speaking, prosecutors prefer to use one of the statutory offences available to them. There are two main statutes. Firstly, there is the Public Bodies Corrupt Practices Act 1889 which generally applies to local government and other public bodies. This provides that it is an offence, punishable with up to 7 years imprisonment, to offer or receive a gift or payment etc as an inducement or reward in respect of the public body's functions. The offence is committed by both parties. The other Act is The Prevention of Corruption Act 1906. This applies to agents of the State and is essentially aimed to those acting for the State who are not the type of civil servant caught by the 1889 Act; e.g. police officers. Both of these Acts are supplemented by the Anti-Terrorism, Crime and Security Act 2001 which adds an international dimension to the offence of corruption.

'Corruptly' is defined as purposefully doing an act which the law forbids as tending to corrupt; *R v Wellburn* (1979) 69 Cr. App. R 254. For example, in *R v Smith* [1960] 2 QB, 23 the Defendant offered a bribe to a mayor. This was held to be an offence under the 1889 Act even though the Defendant claimed that his motive was to expose the mayor as corrupt. Conversely, it is possible that a payment intended to corrupt is not received as so - it is received innocently. Then the giver would be guilty of corruption but not the receiver; *Millray Cleaning Co. Ltd* [1962] Crim LR 99.

POLICE OFFICERS

Individually most corrupt officers probably believe they are decent officers who are just making a few extra quid

for themselves or levelling out the odds against the criminals. The most prevalent type of corruption is the so-called 'noble-cause' corruption.

Noble-cause corruption is where an officer will simply lie, exaggerate or invent evidence in order to convict a suspect he 'knows' is 'well at it' - of course there is nothing at all 'noble' about that sort of conduct. As well as noble-cause corruption there is also plain out and out 'bent' officers selling secrets for cash, stealing evidence, bribing suspects and so on. This type of corruption is taken much more seriously by the Courts and we are seeing more and more such cases in the criminal Courts.

It was brave of Lord Condon to put a figure to the number of bent officers on his force but the truth is that it can only ever be guesswork. Indeed Rahman Ravelli are presently involved in defending a case where it is said that the victim had links with a certain police officer who was said to be possibly involved in corrupt practices.

WHY?

The award winning BBC correspondent Graeme McLagan's excellent book 'Bent Coppers' explains the facts and figures of police corruption and sheds some light on the factors which can contribute to an officer being lead astray. It's a slippery slope from noble-cause corruption to simply taking bribes or stealing money and that slope is easy to step onto if you are young impressionable, career-minded officer working within a squad of officers where bending the rules appears accepted; be one of the boys - or be on your own. That mentality contributed to the outrageous corruption that infested parts of the Flying Squad in the 1990s and, at around the same time, Kent's South East Regional Crime Squad and Stoke Newington's C.I.D. The Flying Squad corruption cases included allegations of the planting of guns on robbery suspects when it turned out the 'armed' robbers weren't armed after all.

INFORMANTS

Perhaps the greatest danger for all is in the field of informant handling. Informants are recognised by the Courts as a necessary and vital tool in the fight against crime. Informants are not highly regarded, they are a necessary evil. The Courts know that informants are likely to have a reason to lie but they also know that without in-

formants and police-handlers a great many prosecutions of those accused of very serious offences would simply never take-off. The relationship between a police-handler and his informant is a delicate one. The officer receives training and understands the limits of his role; both sides can do well from the informant's information and, both officer and informant, may have motive for ensuring that what the informant says at least appears reliable. The officer has also to be very careful not to fall into crime himself. It's one thing perhaps to overlook a minor offence from a prized 'grass'; its another to encourage the grass to be come a participating informant, or to tip him off about operations which could place their happy relationship in jeopardy. This danger can only increase now that the new Serious and Organised Crime Agency is starting to find its feet with the powers that the Agency has to offer immunity from prosecution and reductions in sentence to informants. Rahman Ravelli are already involved in defending a client where the evidence against him includes a witness who has agreed a formal written 'deal' with SOCA to give evidence against our client in return for a reduced sentence and immunity.

LEGAL ARGUMENTS

There is really no special breed of argument particular to police corruption cases. As many readers will know where there are credible allegations of serious executive misconduct then an abuse of process argument is possible; that is a submission that the Defendant cannot receive a fair trial, or that, given the behaviour of the police it would not be fair to try him.

There are many reasons why a Judge might conclude that it would not be proper for the Court's to be used to prosecute a Defendant and they all come back to the question of fairness; for example delay in bringing proceedings, manipulation of the Court's procedures, entrapment, etc etc. The prosecution will always argue that the Judge could ensure fairness by, e.g. excluding parts of the evidence, or by warning the jury that the Defendant has been unable to call certain evidence because it has been destroyed - in other words anything except throw the case out before it even starts.

DISCLOSURE

There is not enough room here to detail the law on abuse of process applications. In any event any discussion on the topic is of limited value as each case depends on its own particular facts. Any such argument may well be preceded by a Public Interest Immunity (PII) application. That disclosure hearing could be the be all and end all of the matter - if you don't get the material the abuse of process argument will fail. In those sorts of cases it is vital to consider the many options that the Judge has and ensure he has them in mind before seeing the prosecution in private for their PII application; for example, in certain limited circumstances the Judge might be persuaded to

order the use of special independent counsel in the PII hearing in order to offset the problems caused by the lack of presence of anyone representing the Defendant; see House of Lords case of R v H & C [2004] 2 AC 134 (Feb. 2004)(the writers acted for H).

SYSTEMATIC ABUSE

There will also be cases of more systematic abuse, see for example last month's article 'Stop Bugging Us' about the apparently sanctioned actions of police unlawfully recording conversations between lawyer and prisoner client. All these sorts of abuses do is make it more difficult for the Crown to prosecute legitimately conducted cases. There will be times when the cross-examination of a police officer is along the lines of 'you are a liar' and 'you have set my client up'. Juries are now becoming much more open to this line of cross-examination than they once were - they are prepared to believe that the Officer in front of them is not Dixon of Dock Green. Stories of police corruption over the years have eroded the faith that the jury once had in the police. That said accusing an officer of being 'bent' is a serious matter and not to be taken lightly. Scandalising a witness will not endear the Judge to the defence, and it may well be the Judge who will have the last word.

If you are a Defendant on the receiving end of corrupt police practices then you are in for a rough ride. Very careful thought has to be given to what specific allegations are being made and what evidence there is to back the allegations up. It maybe that the Defence Statement will have to specifically plead the allegation of corruption - this should lead to requests for disclosure of the officer's record, i.e. pending and proven allegations of misconduct, as such material will assist the Defendant's defence.

Resistance can be expected at that stage. As ever, careful thought and early preparation is the key.

AUTHORS

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