

Ms Clare Whitaker
Serious Fraud Office
Elm House
10 – 16, Elm Street
London
WC1X 0BJ
BY HAND

Your Ref: RA
Our Ref: GBJ/AEH/Nadir

23rd September 2010

Dear Ms Whitaker,

Re: Asil NADIR

Thank you for the copies of the statements and exhibits received in hard copy. We write at the suggestion of leading counsel, William Clegg QC, who has read and approved the contents of this letter.

We have been preparing the case for the next hearing and would like to draw your attention to a further accountancy report which has been disclosed to the defence by the trustees in bankruptcy. It would appear that those responsible for the conduct of the prosecution back in 1991-92 might have been guilty of suppressing this report. We appreciate that this is a most serious allegation to make and, if true, would obviously have consequences for the future conduct of the prosecution. Obviously if our suspicions are unfounded then we will be the first to acknowledge that.

By way of background the charges currently faced by Mr Nadir and contained in indictment F all relate to allegations of theft from Polly Peck International PLC (“Polly Peck.”) We do not understand that it was in dispute that the funds, alleged to have been stolen, were withdrawn from the accounts of Polly Peck. The defence case was that identical amounts, in Turkish lira, were credited, in advance of the withdrawals from the Polly Peck accounts, to the accounts of Uni-pac Packaging Industries Limited (“Unipac”), a wholly owned subsidiary of Polly Peck based in the Turkish Republic of



Northern Cyprus (TRNC), which company acted as a central banker for the Polly Peck group. So in summary the defence case was that no money was stolen by anyone and there were no missing funds, all the withdrawals from Polly Peck the subject of the counts on the indictment were balanced by contra entries in the accounts of Unipac. This defence was supported by two reports commissioned by solicitors formally acting for Mr Nadir, Messrs Vizards and S.J. Berwin & Co, from BDO Binder Hamlyn dated the 26th June 1991 and the 27th June 1991, a copy of the report dated the 26th June 1991 was disclosed to the SFO the same day and a copy of the report dated the 27th June 1991 was disclosed to the administrators also on the same day. The crucial finding of BDO Binder Hamlyn was that the explanation of contra payments into the accounts of Unipac was fully supported by the books and records of Unipac and its account with the Industrial Bank of Kibris ("IBK") the original books and records of both had been inspected by them in TRNC and they concluded that "*we did not see anything in our examination of the accounting books and records of Unipac and the bank statements of IBK which would lead us to conclude that they were not genuine.*" Copies of the two reports of BDO Binder Hamlyn are enclosed for your records.

The findings of BDO Binder Hamlyn were potentially determinative of the criminal proceedings as was perhaps reflected by the decision to interview the author of the report, on the 24th July 1991, under Section 2 of the Criminal Justice Act 1987 despite the fact he was a defence expert witness (we currently await a copy of his section 2 interview). Concern was then raised, by those then having the conduct of the prosecution, that BDO Binder Hamlyn could possibly have been shown forged documents. When this possibility was raised Vizards instructed Mr L.F.Dick and Unipac's lawyers in TRNC instructed Mr M. Ansell, both acknowledged experts in the field of document examination to inspect the books and records examined by BDO Binder Hamlyn and report on their authenticity, we enclose copies of their reports as well. Against this background Vizards encouraged the SFO and the accountants retained by them, KPMG, to visit Northern Cyprus to examine the books of Unipac and the banking records for themselves in order to satisfy themselves that the conclusions of BDO Binder Hamlyn fairly reflected the material they had seen and examined. Negotiations for the proposed trip were protracted and ultimately never went ahead. We enclose copies of the correspondence between the SFO and Vizards dealing with the abortive trip. The failure of the SFO and KPMG to visit Northern Cyprus to examine for themselves the records and banking documents which underpinned the BDO Binder Hamlyn report was most unfortunate as, had such a trip been possible, and the opinion of BDO Binder Hamlyn been confirmed by KPMG, then we anticipate the criminal proceedings would have been discontinued. We note that in the evidence at the trial of Elizabeth Forsyth, Mark Bennet, accountant employed by KPMG as one of the team assisting the SFO said "*you would not expect to find a match in the book of Polly Peck. What happens in the subsidiaries account and what they do with the money and whether it is matched is essentially their business.*" We enclose a copy of the full transcript of Mr Bennet's evidence for your information.

We have now had disclosed to us, by the trustee in bankruptcy, copies of two further reports and part of a third report from Will Inglis, a partner of Deloitte & Touche LLP (as they then were) headed "Mantle" dated the 3rd July 1991 and the 30th July 1991 in respect of the two complete reports respectively and undated and in respect of the final report of which we only have part. Deloitte & Touche had been instructed on behalf of the administrators. Crucially these reports concluded that *"the purported extracts from the accounting records of Unipac and IBK are fragmentary. However, having compared all the Mantle round sum transfers to Unipac which we have identified with the Unipac / IBK records as we have them, no inconsistency or discrepancy arises. A large number of such transfers (apart from those specifically dealt with by BDO) can be seen to give rise to the accounting entries in Unipac's books which would be expected if they were part of similar arrangements. If further charges were brought against Nadir he may have to support a similar defence with further extracts from the Unipac / IBK records. However it is highly unlikely that such further records will reveal any inconsistency with those already provided. The sums identified above as passing through the Nadir current and contra accounts are therefore consistent both with Berwin's explanation and our own investigations", and later "Unipac's cash book and ledger account for its Turkish lira IBK account are consistent with IBK's records to the extent that they overlap" and later "otherwise there seems to be nothing in the limited accounting records we have which can be said to be inconsistent with the alleged transactions having taken place,"* (a copy of the Mantle reports are enclosed.) This evidence would appear to be supported by a statement from Robert Burrow, dated the 9th June 2000, a partner at S.J. Berwin & Co., who states that he personally inspected the original accounting records of Unipac and also the original banking records at IBK, in TRNC, between May and July 1991 (a copy of his statement is also enclosed.)

It appears to us that this crucial evidence, namely the three Mantle reports, was never disclosed by the SFO either in 1991 or later. If the SFO were aware of the reports and the conclusions reached then the failure to disclose the same (if failure there was) would appear to amount to prosecutorial misconduct or the most serious nature.

We understand that the administrators and those in charge of the investigation at the SFO kept in close contact with each other throughout 1991 and indeed in 1990 as well, as would be expected, and we would find it incredible that the author of the Mantle report, and those who accompanied him to Northern Cyprus, never disclosed the same to the investigators, as the contents of the report go right to the heart of the case. It is even more disturbing to note that one report is dated the 30th July 1991 which was the time that the abortive trip to Northern Cyprus was the subject of so much correspondence. We cannot help but reflect whether the reluctance to visit Northern Cyprus was because those responsible for the prosecution knew the conclusion of the Mantle report.

The failure to disclose the Mantle reports is even more serious when one considers that statements were taken from many of the team from Deloitte & Touche LLP by the SFO

and no statement revealed the existence of the report despite the fact that the physical examination of the documents, which formed the basis of the BDO Binder Hamlyn report, was described in detail. We have copies of statements provided by Mark Tantam, dated 4th March 1993, Head of the Commercial Investigations Group within Touche Ross & Co. (as it then was); Richard Stone, dated the 10th January 1992, partner in Coopers & Lybrand Deloitte (as it then was); Michael Jordon, dated 10th January 1992, chairman and senior partner with Cork Gully; Christopher Morris, dated 13th January 1992, partner in Touche Ross & Co; Paul Gordon-Saker, dated the 3rd March 1993, partner in the solicitors firm Alsop Wilkinson. We note that the initials of Christopher Morris, Mark Tantam and Paul Gordon-Saker appear on the circulation list for the Mantle Report yet incredibly no statement makes reference to the report and the author of the report Will Inglis was apparently never asked to make a statement at all, despite the fact that at page 17,151 of the exhibits he is clearly identified as visiting Northern Cyprus on the 24th July 1991 with Christopher Howell and Mark Tantam when the documents were examined.. (copies of all statements are enclosed)

It is our view that the contents of the report are of such significance that it must have an impact on the application of the appropriate threshold to be applied by the SFO in deciding whether to continue with the prosecution. Obviously you will want to apply the full code test, as set out in the Code for Crown Prosecutors 2010, namely whether there is a realistic prospect of conviction, to the current state of the evidence including the contents of the Mantle reports. The Mantle reports would clearly also support the view expressed by the joint trustee in bankruptcy, Kevin Hellard, sworn in his affidavit dated the 25th October 2005 that *"I am also advised that the BDO Binder Hamlyn reports do provide a prima facie defence to £ 53,898,480."* (copy enclosed)

We consider that the material disclosed with this letter raises the real prospect that those responsible for the conduct of the prosecution at the SFO in 1991 made a conscious decision to suppress the Mantle reports. If this were to be the position then it would amount to prosecutorial misconduct of the most serious kind and would inevitably raise wider doubts as to the integrity of the investigation.

We would ask that you investigate the position as a matter of urgency and let us know whether our suspicions are well founded. In the event that you are unable to satisfy us that the integrity of the investigation has not been compromised we will alert the trial judge to our concerns at the next hearing.

Yours sincerely,

Bark & Co. Solicitors

cc Richard Alderman, Serious Fraud Office