

ON FRIDAY 3 DECEMBER 1993

QUESTION: MR MICHAEL MATES: To ask the Attorney General, if he has anything to add to his statement to the House on 30 June 1993 concerning the Serious Fraud Office.

MEMBER'S CONSTITUENCY: HAMPSHIRE EAST (CON)

ANSWER: ATTORNEY GENERAL: Shortly after my statement to the House about the Serious Fraud Office on 30 June 1993 (Hansard col 965) Mr Asil Nadir's former solicitor, Mr Peter Knight of Vizards, wrote in response to a general invitation from the Director of the Serious Fraud Office that those concerned about the working of the Office should bring specific anxieties to his attention. Mr Knight wanted the Serious Fraud Office to give further consideration, amongst other things, to its handling of privileged papers during the preparation of its case against Mr Nadir.

The Director has therefore looked into this matter again, in great detail, and has now written to Mr Knight. I am placing the exchange of letters in the Library. The Director's findings show that my statement, responding to My Hon Friend the Member for Hampshire East's personal statement on 29 June (Hansard col 823), was incomplete on the issue of privileged papers and therefore misleading. I am taking the earliest opportunity to correct this.

In April 1991 the Serious Fraud Office acknowledged to Mr Nadir's solicitors that two sealed bags of documents subject to a claim for privilege had been opened in January and February in breach of an undertaking given to the solicitors on 5 December 1990. Documents, which the Serious Fraud Office understood and still believe were not privileged, had been copied to the administrators of Polly Peck International Plc (PPI). This breach of the Serious Fraud Office's undertaking, which they regretted, was acknowledged in my statement and in my predecessor's letter to the Hon Member for Hampshire East dated 20 October 1991 which is already in the Library.

However, it now appears that copies of privileged documents were circulated to the prosecution team on two occasions. The first occasion was on 26 November 1990, before the giving of the undertaking but after a general claim for privilege had been made by Mr Nadir's solicitors. In error copies of these privileged documents formed a small part of a very large distribution of documents routinely copied and circulated to the prosecution team after the search at PPI. The administrators of the company were entitled to access to the vast majority of these documents and were therefore given access to the circulated copy documents including, apparently because the mistake was not then recognised, access to and copies of certain privileged material. The second occasion was on 10 January 1991 when copies of documents seized from Mr Nadir on his arrest were circulated to the prosecution team in the apparent belief that the documents in question could not from their description be privileged, despite the fact that a claim had been made by Mr Nadir's solicitors.

I regret that the fact that copies of privileged documents had been circulated was not acknowledged by the then case controller to Mr Nadir's solicitors, and that no decisive attempt was made to retrieve them until December 1991, despite Vizards' frequently

expressed concern about the matter and the fact that the then case controller appears to have recognised at least by January 1991 that copies of potentially privileged documents had been circulated. The reason is being pursued further by the Director of the Serious Fraud Office. It is, however, right to say that the Director of the Serious Fraud Office is not aware of any attempt to use the documents in conscious breach of privilege when preparing the prosecution case, although on two occasions privileged documents were used, apparently inadvertently.

A thorough check has been made of files of the prosecution team to seek to ensure that all copies of the privileged documents have now been retrieved. Remaining copy documents found on two master files have been secured. However, by reason of the system agreed between the parties, only Mr Nadir's former solicitors knew precisely which documents had been adjudged by independent counsel to be privileged. Mr Nadir's former solicitors are therefore being invited, at the Crown's expense, to provide full details to an independent counsel of all privileged documents taken from PPI and Mr Nadir. The counsel will then be given full access to papers under the Serious Fraud Office's control to ensure that no privileged documents have been overlooked. The administrators will also be asked to cooperate in giving access to their documents.

Should Mr Nadir believe that he has suffered prejudice as a result of what has occurred he can raise this with the trial Judge at the appropriate time. The prosecution would in any event bring the matter to the Judge's attention.

Since my statement no further evidence has come to light to substantiate any of the other allegations which have been made about the Serious Fraud Office's handling of Mr Nadir's prosecution. I do not believe that the facts disclosed today, although regrettable, justify the independent investigation

called for by the Hon Member for Hampshire East last June. Moreover, as I said in response to his personal statement there is no precedent for an independent inquiry in parallel to a trial. Mr Nadir has already made the handling of his case by the authorities an issue in the case and the trial process itself is designed to deal with this. The right course remains for Mr Nadir to return to this country to face trial; and, should he wish to make any complaints about the prosecution's handling of his case, to raise them with the trial Judge.