

THE INDEPENDENT

Wrangle adds to fears that Nadir case is lost: Disclosure that privileged documents seized in raid were sent to prosecution threatens the long-term future of investigating body. Tim Kelsey reports

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JOURNALISTS were the first to knock on the door of Polly Peck International's headquarters in London's Berkeley Square on 30 October 1990. They explained that they had come at the invitation of the Serious Fraud Office and within minutes policemen arrived to raid the premises. It seemed as if the press had been tipped off - a charge the SFO denies.

The police carted off hundreds of documents and sent them in sealed bags to the Serious Fraud Office. There they remained, supposedly unopened. Shortly after the raid, Peter Knight, a lawyer acting for Nadir, who was facing charges of theft and false accounting in connection with his management of Polly Peck, insisted that the SFO did not have a right to seize or examine some of those documents.

These were covered by legal professional privilege, which allows that correspondence between a lawyer and client is private.

In December 1991, Nadir returned to Britain after a sojourn in northern Cyprus and was arrested. On his arrest more documents were taken by the SFO. Some of these were also covered by privilege, his lawyers argued.

A long correspondence ensued (none of which has been published today) between Mr Knight and the Nadir case officer at the SFO, Lorna Harris, about the status of those documents and the SFO agreed not to touch those that were disputed until the issue had been resolved. Nadir's team wanted an independent lawyer to adjudicate which qualified for privilege and which did not. Eventually they won and Ms Harris accepted independent arbitration.

But the bags had been tampered with. Until yesterday, the SFO and the Attorney General had stated that two document bags were opened in error by policemen. In fact, more than five bags had been opened and documents circulated not only to Nadir's prosecutors at the SFO but also to the administrators of Polly Peck - the accountants trying to retrieve assets from the collapsed company for its creditors. They were circulated twice to the prosecution.

It is technically illegal to breach legal privilege. In a sense, the documents had been stolen; it opens those guilty of it, at least to civil proceedings by the aggrieved victim and poses a real threat to the survival of the SFO.

Its handling of the Nadir investigation has been the subject of much concern. The Independent has investigated the issue for months and most recently disclosed that an allegation, taken very seriously by the SFO, that Nadir's trial judge was involved in a bribery plot was based on the evidence of two witnesses who now claim they made it up.

Barbara Mills QC, the then director of the SFO, ordered her counsel to inform the judge of the allegation. According to court transcripts which had been covered by reporting restrictions until the Independent had them lifted this week, the SFO did not disclose any evidence to substantiate even this step. Ms Mills moved on to become Director of Public Prosecutions. In that capacity, she advised the police earlier this month that she could find no evidence of an allegation involving the judge. The disclosures yesterday add to existing fears that Nadir, for whom the spectacle of the SFO's humiliation is a cause of great satisfaction, may never have to face trial - because no judge will be prepared to advise a jury to accept evidence from a prosecution so tainted.

It is not clear why the Attorney General or George Staple, current director of the SFO, chose yesterday to disclose that the privileged defence papers had been circulated to the prosecution. But they may have done so in order to head off calls for an independent inquiry into the whole of the SFO investigation into Nadir. They have both asked Nadir's former solicitors to supply a full list of documents that may have been circulated illegally to an independent counsel who has full powers to investigate.

They have now admitted that, as early as January 1991, Ms Harris realised that copies of potentially privileged documents had been circulated. On 5 December, she gave an undertaking not to examine any documents identified as possibly under privilege. Mr Staple conceded in his letter to Nadir's lawyer that bags were opened after the raid on Polly Peck's headquarters 'for the purpose of preparing an inventory'. Other bags, taken at the time of Nadir's arrest, were also opened.

So why did they originally say only two were opened? Sir Patrick Mayhew, when Attorney-General, told Michael Mates in a letter of October 1991, that only two had been opened and that this was an accident. He said it was a 'misunderstanding between the police officers involved'. Then in a statement in June, his successor Sir Nicholas Lyell repeated that assertion.

Mr Staple has now conceded that these officers set about photocopying these documents after seizing them and copying them within the SFO and to the administrators. He has also admitted that he cannot be certain that all have been retrieved. 'Considerable efforts were made to identify copies of any documents which have been . . . circulated. Unfortunately we cannot be completely certain that all privileged documents were removed.'

What Mr Staple does not explain is why the SFO claimed at the outset that only two bags had been opened, or on whose authority.

Ms Harris, a lawyer, is the only officer of the SFO identified in the written answer and letters published yesterday. She has now left the SFO on secondment to another organisation. Her solicitors said last night that she was considering her position and would make no comment. City sources refuse, however, to accept that she bore sole - or even any - responsibility for opening the bags.

'The SFO still has much to explain about its conduct of this investigation,' said one source close to the organisation. 'We know that sooner or later, we'll have to start telling the whole truth.'

(Photograph omitted)