

Ms Clare Whitaker  
Serious Fraud Office  
10-16 Elm Street  
London WC1X 0BJ

12 October 2011

Dear Ms Whitaker,

**RE: Regina v Asil NADIR**

Thank you for your letter dated 11 October 2011. You are correct that our letter dated 30 September 2011 was copied to the trial Judge. This was because it was in response to your letter dated 28 September which was itself copied to the trial Judge.

We are concerned that your letter uses semantics in order to avoid making the disclosure which is sought. Disclosure within a fair trial process is not a game of "you hide, we seek", particularly bearing in mind the disclosure regime that applied at the relevant time.

We are concerned to learn that the SFO has not received any material held by the Metropolitan Police as a result of the review by Counsel at Tintagel House, lasting at least two days (19 & 23 September 2011). In your letter dated 27 September 2011 you acknowledged that the SFO, through Counsel, was liaising with the Metropolitan Police in relation to disclosure on the issue raised in our letter dated 26 September 2011 that was under reply. This letter concerned disclosure in relation to the handling of the informants Francis and Welsher prior to 29 July 1992. *x Mike O'Keefe*

It seems apparent that there is a wealth of material which has been examined in relation to this discrete issue and, frankly, we are at a loss to understand why it is that nothing appears to be disclosable. On what basis do you say that this material is not disclosable? It cannot be relevance, because you have agreed to conduct the investigation and have already made partial disclosure in respect of this matter in any event (see, for instance, Disclosure file 3) and your letter of the 11 October 2011 demonstrates a clear understanding of this issue and its disclosability. Formerly, following the failure to make any disclosure about contact between the informants and the police from January 1991, and the failure to address the simple question of date in unequivocal terms, we were concerned that the SFO were not making

disclosure of pre-July 1992 material on the grounds of relevance but are reassured by this letter that is not the case.

The only other basis for non-disclosure would be PII, but you have not indicated that this is the case and we remind you that secrecy was waived in open court, by Counsel for the DPP, when the allegations were formally withdrawn and an investigation into the origin of the allegations announced.

You will be well aware of the concession made in open Court by Alun Jones QC on behalf of the Crown. Mr Alun Jones QC had attended court to provide an explanation to Tucker J on 26 November 1993. He said:-

*"We have continued to investigate this matter over recent months in order to investigate how it was that the allegation came to be made, my Lord, a matter of obvious public importance"*

He later concedes that:-

*"My Lord, as your Lordship knows, these informants, I have spoken about their names because they have on any view waived any confidentiality there may have been in relation to informants and their secrecy by having appeared recently in Northern Cyprus.....they have waived any secrecy...."*

The Crown now has in its possession:-

1. Affidavits of Michael Francis, Wendy Welsher and Michael O'Keefe in which they swear that they were police informants prior to July 1992, and that their handlers included officers attached to the SFO investigation of Mr Nadir.
2. A transcript of a telephone conversation between Michael Francis and Detective Chief Superintendent Glendinning, in which Mr Gendinning confirms that the operation had been going on since 1991.
3. Copies of microfiche showing that Davies travelled to France on 26 July 1991 with two passengers, which supports the accounts of Francis and Welsher.
4. Correspondence and attendance notes to which Legal Professional Privilege attaches, which were sent by a serving Kent police officer to Chief Superintendent Davies at the SFO on 5 April 1994, in circumstances which clearly demand an explanation. How the SFO have come into possession of privileged documents that have been taken from the offices of a private investigator instructed by Mr Nadir's then solicitor plainly requires an explanation, as does the failure to disclose this fact in the subsequent years. In particular, an explanation is required as to why these documents were not disclosed in the March and July abuse of process hearings that focussed on breaches of LPP.

We note from your letter of the 11 October 2011 that the material was identified by disclosure counsel but no date is given. This material is not only relevant to an abuse of process argument but also provides evidence demonstrating the defence contention that SFO



personnel were collaborating with the informants over a year prior to that represented by the SFO. Thus, it is relevant to the head of abuse concerning the allegation of the plot to bribe the original trial judge as set out in the DCS, abuse skeletons and correspondence.

We are equally concerned by your understanding from the Metropolitan Police that there is no current investigation into matters arising from the allegations made by Francis and Welsher about a plot to bribe the original trial Judge and that, where a 'current investigation' is referred to in correspondence, it is the SFO case that is meant. This appears to contradict the correspondence to date.

On 13 September 2011, Bark & Co wrote to Sir Paul Stevenson, the then Commissioner of Police enquiring into an investigation into the circumstances in which the original allegations of perverting the course of justice were first made and enclosed a letter dated 10 December 1993, written by Detective Chief Superintendent Glendinning. Under reply dated 16 September 2011, Commander Peter Spindler of the Directorate of Professional Standards responded as follows:-

*"The MPS is aware of the ongoing criminal investigation to which your letter refers..."*

By letter dated 27 September 2011, Bark & Co responded as follows:-

*"Thank you for your letter dated 16 September 2011 and for your indication that there is an ongoing criminal investigation concerning the circumstances into which the original allegations of perverting the course of justice were first made. It is not clear whether this is a re-opening of the original investigation that was conducted in 1993, or is more recent".*

In his reply dated 29 September 2011, Commander Spindler reminded us that the Serious Fraud Office "had made contact in accordance with their obligations under the Criminal Procedures and Investigations Act 1996 (approaching potential third party material holders)". Importantly, he stated as follows:-

*With that in mind it would not be appropriate for me to discuss this investigation with you any further at this stage"*

You indicate that "Further searches continue into whether there was a further enquiry of any sort. I shall notify you once a response has been received". It is absolutely clear that such an enquiry was conducted. Alun Jones QC, representing the DPP, advised the then trial Judge that:-

*"As I understand it on 30<sup>th</sup> June the Attorney General made an announcement...that there was no credible evidence...My Lord, the investigation continues, but it continues into an investigation of the*



circumstances in which this allegation has come to be made.....My Lord it is right therefore that the circumstances in which the allegation had been made should have continued to have been investigated, as they have been since".

In his letter dated 10 December 1993, Detective Chief Superintendent Glendinning said:-

"The circumstances under which the original allegations of perverting the course of justice were first made are still being investigated"

We are greatly concerned that the results of this investigation, like all the other material that would assist the defence in establishing the veracity of the claims made by Francis, Welsher and O'Keefe, is yet to be located.

To avoid any possibility of misunderstanding arising from the use of the word "investigation" and the reference to Francis and Welsher, we wish to make it clear that we are referring to any investigation arising from the allegations made by Francis and Welsher about the alleged plot to bribe the original trial Judge, the allegation that the informants were directed and controlled by police officers and the investigation into the conduct of those police officers which of course, as we have made clear, is conduct that commenced in January 1991.

Further, you state that you are still awaiting a statement from the Metropolitan Police concerning their practices regarding the retention and destruction of records. With respect, this does not even begin to address the issue. Could you please inform us what efforts have been made by yourselves to locate the missing duty sheets and notebooks of the officers seconded to the SFO, including details of the logging and storage of the same and what evidence exists that they have actually been destroyed. In the absence of a certificate of destruction, we have to take the view that this material still exists and, bearing in mind that this has never been a "closed" case, we can conceive of no situation where they would not continue to exist.

It is difficult to understand why this matter has not been progressed in the 4 months since the issue was first discovered by the defence in the abuse of process hearing.

We enclose a copy of a letter dated 10 October 2011 to Commander Spindler, in which we ask that the Metropolitan Police provide us with supporting documentation (in addition to the duty sheets and pocket books) that is capable of corroborating the defence contention that the informants Francis, Welsher and O'Keefe were informants prior to 29 July 1992. Such documentation is listed on the second and third pages of the said letter. We ask whether any of this documentation is held by the Serious Fraud Office or has been seen to be in the possession of the Metropolitan Police.

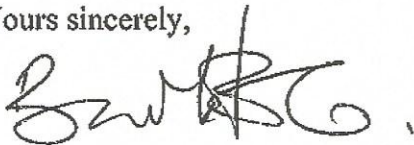
We have made enquiries of both yourself and Commander Spindler concerning a visit to the trial Judge by police officers prior to the last hearing, and requested to know what the purpose of that visit was, if it took place. We wrote to Commander Spindler on 27 September 2011, with a reminder on 7 October 2011. On that date, Commander Spindler indicated that he would look into the matter, and come back to us the following week. To date we have had no response.

In your response dated 27 September 2011, you indicated that "*The SFO is not aware of any approaches to Holroyde J from the Metropolitan Police in relation to this case*". Are you aware of any approach to Holroyde J by any police officers on 22 September 2011 or at all?

We are very anxious that this matter be resolved as soon as possible and that if it is a misunderstanding on the part of the defence you say so in unequivocal terms.

Finally, we request that you bring these matters to the attention of the Attorney General, or we shall. We require your urgent confirmation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Bark & Co', written over a horizontal line.

**BARK & CO SOLICITORS**

cc Clerk to The Honourable Mr Justice Holroyde