

## **CPS DECISION: “CASH FOR HONOURS” CASE**

1. Carmen Dowd announced today her decision on behalf of the Crown Prosecution Service (CPS) that there would be no criminal proceedings arising out of the so called “Cash for Honours” investigation. In reaching this decision, she was advised by a team of independent counsel, led by David Perry QC. The Director of Public Prosecutions played no part in the decision-making process. In his stead, Carmen Dowd consulted the Director’s Principal Legal Advisor, Chris Newell.
2. The investigation, by a team of the Metropolitan Police led by Assistant Commissioner John Yates, commenced in March 2006, following a complaint made by a member of the Scottish National Party, that an attempt had been made to confer peerages in contravention of section 1 of the Honours (Prevention of Abuses) Act 1925 (‘the 1925 Act’). The complaint alleged that a number of individuals had agreed to make substantial loans to the Labour Party on the understanding that they would be rewarded by the grant of a peerage.
3. From the outset, the CPS assisted the police with their enquiries, offering legal advice as appropriate and whenever sought. The police passed material to the CPS on a regular basis, before submitting their main report in April 2007. Having considered that substantial report in detail, the CPS invited the police to undertake further enquiries. Further submissions followed, culminating in the seventeenth and final submission of evidence on 2 July 2007. Thereafter, counsel considered all the material submitted by the police and provided their own lengthy and detailed advice to the CPS.
4. Advice from counsel is provided to the CPS on a confidential basis. It is not our practice to publish such advice, particularly where it analyses in great detail the conduct of named persons against whom no criminal proceedings can properly be brought. The CPS does not intend to depart from that practice in this case; but we recognise the great public interest in the investigation and its outcome. We therefore wish to say as much as we believe we properly can

to explain the nature of the issues that we had to consider, which we hope will assist in understanding the decision that has today been announced.

5. It is a matter of public knowledge that the principal focus of the investigation was into possible breaches of the Honours (Prevention of Abuses) Act 1925 ('the 1925 Act'). There were some subsidiary issues relating to the Political Parties, Elections and Referendums Act, 2000 ('the 2000 Act'); and during the course of the investigation itself it became necessary to consider whether certain events might be interpreted as acts tending and intended to pervert the course of justice. For the avoidance of doubt, we wish to emphasise that today's decision indicates unequivocally that there is insufficient evidence to support proceedings against any individual, for any offence under either the 1925 Act or the 2000 Act, or for any offence of perverting, or attempting or conspiring to pervert, the course of justice.

## **Background**

6. On 5 May 2005, the Labour Party won a general election. About a month later, Downing Street officials began work on the preparation of a list of suitable candidates for nomination as Labour working peers.
7. Throughout the summer of 2005, various drafts of the list were prepared. On 3 October 2005, the final list (which included candidates proposed by other political parties) was approved by the Prime Minister and shortly thereafter sent for scrutiny to the House of Lords Appointments Commission ('HOLAC').
8. On 9 March 2006, reports began to appear in the press that a number of the Labour Party nominees had made 'secret' loans to the Party, and that these loans had not been disclosed to HOLAC. Shortly afterwards, the Labour Party published the names of the individuals from whom the Party had received loans. The individuals included four of the nominees who appeared on the list submitted to HOLAC.

9. The police investigation subsequently revealed that the names of other individuals who had loaned money to the Labour Party appeared on earlier drafts of the working peers list.
10. The loans had been obtained in order to meet the high level of expenditure connected to the 2005 election campaign.

### **Life Peerages**

11. This case concerns the creation (or recommendation for creation) of life peers known as “working peers”.
12. “Working peer” is simply the term given to a peer who is expected to attend the House of Lords on a regular basis in support of the party by which he is nominated. Individuals are therefore nominated on a party political basis. The Prime Minister will decide how many working peers are to be created and how the numbers are to be apportioned between the political parties. Where peerages are created for representatives of the opposition parties, the names of the nominees are selected by each party leader and passed to Downing Street for the Prime Minister’s consideration. Once the list of nominees has been drawn up, it is submitted to HOLAC for scrutiny.

### **The 1925 Act**

13. Section 1 of the 1925 Act creates two offences of abuse in connection with the grant of honours. Section 1 provides:

*‘(1) If any person accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, or for any purpose, any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.*

*(2) If any person gives, or agrees or proposes to give, or offers to any person any gift, money or valuable consideration as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he shall be guilty of an offence.'*

14. The offences are triable either way. On conviction on indictment, a person is liable to imprisonment for a term not exceeding two years, or to an unlimited fine, or both.
15. In essence, the conduct which the 1925 Act makes criminal is the agreement, or the offer, to buy and sell dignities or titles of honour. Section 1(1) is drafted in wide terms and captures any agreement in which a seller agrees to procure a peerage in return for money or other valuable consideration. Section 1(2) is also drafted in wide terms and captures any agreement in which a buyer agrees to provide money or other valuable consideration, in order to induce a seller to procure a peerage.
16. The core ingredients of the offence contrary to section 1(1) of the 1925 Act ('the seller limb') are as follows:
  - (1) accepting, obtaining or agreeing to accept or attempting to obtain;
  - (2) any gift, money or valuable consideration;
  - (3) as an inducement or reward for procuring, or assisting or endeavouring to procure, the grant of a dignity or title of honour.
17. The core ingredients of the offence contrary to section 1(2) of the 1925 Act ('the buyer limb') are as follows:
  - (1) giving, agreeing or proposing to give, or offering;
  - (2) any gift, money or valuable consideration;

- (3) as an inducement or reward for procuring, or assisting or endeavouring to procure, the grant of a dignity or title of honour.

### **The 2000 Act**

18. The relevant offence under the 2000 Act is committed by a failure to report the receipt of a loan made other than on commercial terms.

### **Perverting the Course of Public Justice**

19. The common law offence of perverting the course of public justice is committed where a person: (a) acts or embarks upon a course of conduct, (b) which has a tendency to, and, (c) is intended to pervert, (d) the course of public justice.
20. The offence may be committed where acts are done with the intention of concealing the fact that a crime has been committed, although no proceedings in respect of it are pending or have commenced, and even in circumstances where a police investigation has not yet begun. A positive act is required: inaction is insufficient.

### **Conclusions**

21. In arriving at our conclusions, we have acted strictly in accordance with the Code for Crown Prosecutors.
22. A decision whether or not to prosecute is a two stage process. First, consideration must be given to whether there is a realistic prospect of conviction ('the evidential test'). Secondly, if (and only if) it is decided that a realistic prospect of conviction exists, consideration must then be given to whether a prosecution is in the public interest ('the public interest test'). The evidential test is contained in paragraph 5 of the Code for Crown Prosecutors which, so far as is material, provides as follows:

*'2. Crown Prosecutors must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.*

*3. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.*

*4. When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:*

*Can the evidence be used in court?*

*a. Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it is gathered? If so, is there enough other evidence for a realistic prospect of conviction?*

*Is the evidence reliable?*

*b. Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?*

*c. What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?*

...

*f. Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness.*

*5. Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.'*

23. As will be clear from paragraphs 13 to 17 above, an offence is committed if
- an unambiguous offer of a gift, etc, in exchange for an honour, is either made or solicited by one person to or from another, even if that other person refuses either to accept or to make such an offer; or
  - one person agrees with another to make/accept a gift, etc, specifically in exchange for an honour.
24. There is nothing in the circumstances of this case to suggest that the first of these routes to the offence has been taken. There is no complaint from any person that they have been offered a gift, etc, in exchange for an honour. There is no complaint from any person that they have been asked to make a gift, etc, in exchange for an honour. The investigation has therefore necessarily focused on the question whether there was any **agreement** between two people to make/accept a gift, etc, in exchange for an honour.
25. In a case such as this, the essence of the offence lies in that unambiguous agreement. If one person makes an offer, etc, in the hope or expectation of being granted an honour, or in the belief that it might put him/her in a more favourable position when nominations are subsequently being considered, that does not of itself constitute an offence. Conversely, if one person grants, etc,

an honour to another in recognition of (in effect, as a reward for) the fact that that other has made a gift, etc, that does not of itself constitute an offence. For a case to proceed, the prosecution must have a realistic prospect of being able to prove that the two people **agreed** that the gift, etc, was in exchange for an honour.

26. Such an agreement might be proved either by direct evidence, or by inferences that can be drawn from the circumstances of the case. Such inferences must be so strong as to overwhelm any other, innocent, inferences that might be drawn from the same circumstances.
27. There is no direct evidence of any such agreement between any two people subject of this investigation.
28. The CPS has therefore considered with the greatest care what inferences can properly be drawn from the circumstances. In doing so, we have recognised the dangers in viewing circumstantial evidence in isolation, on a piecemeal basis. In order properly to appreciate the significance and to understand the inference, or possible inferences, that might be drawn from any piece of evidence, it is necessary to examine it in the context of the case as a whole. What might appear in one light when viewed on its own can appear in a wholly different light when viewed against a wider backdrop.
29. It is the case that each of those who lent or donated money to the Labour Party and who have been interviewed during the course of the investigation has denied that any improper agreement was made, as have all those concerned within the Labour Party and in Downing Street. There is furthermore substantial and reliable evidence that there were proper reasons for the inclusion of all those whose names appeared on the 2005 working peers list, or drafts of that list: that each was a credible candidate for a peerage, irrespective of any financial assistance that they had given, or might give, to the Labour Party. Against that backdrop, the CPS is satisfied beyond doubt that the available evidence is not sufficient to enable an overwhelming

inference to be drawn, such as to afford a realistic prospect of convicting any person for any offence contrary to Section 1 of the 1925 Act.

30. In relation to possible breaches of the 2000 Act, we are satisfied that we cannot exclude the possibility that any loans made – all of which were made following receipt by the Labour Party of legal advice - can properly be characterised as commercial.
31. In relation to any events which might have been interpreted as acts tending and intended to pervert the course of public justice, we are satisfied that the weight of the evidence that has now been considered does not support that suggestion. There is therefore no realistic prospect of conviction in respect of the offence of perverting the course of public justice against any individuals.
32. The events under investigation and the police enquiry itself have become the subject of intense political controversy and prolonged media interest. The investigation has involved an enquiry into the probity of senior political figures working at the very heart of government. Indeed, the investigation has been primarily concerned with the conduct of individuals working within Downing Street and who were, therefore, closely connected to the former Prime Minister. Owing to the political context of the matters investigated, it is inevitable that the issues raised by the enquiry have become the subject of political debate, often conducted in partisan terms. The CPS makes it clear that political questions have played no part in its analysis of this case. The criminal law of England and Wales applies to every citizen alike, regardless of his or her political affiliation or official status. Equally, the criminal law cannot be used to single out a citizen for adverse treatment because he or she has such an affiliation or enjoys such status. Moreover, the conclusions reached by the CPS are the result of independent and professional judgment, following a thorough and professional investigation by the police. Extraneous considerations such as political or public opinion have played no part in the analysis, nor have they played any part in the decision making.