

## Public Concern at Work

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## Whistleblowing and Leaking Case Studies

### Damian Green MP Case Study

From 2007-2008 Home Office ministers became concerned about a number of leaks within the department, some of which had been received by Damian Green, then a Shadow Conservative Minister. The leaks included information about:

- The November 2007 revelation that the Home Secretary knew the Security Industry Authority had granted licences to 5,000 illegal workers, but decided not to publicise it.
- The February 2008 news that an illegal immigrant had been employed as a cleaner in the House of Commons.
- A whips' list of potential Labour rebels in the vote on plans to increase the pre-charge terror detention limit to 42 days.
- A letter from the Home Secretary warning that a recession could lead to a rise in crime.

The Home Office became concerned that continuing leaks could lead to further leaks of *"a series of other material across Government, which did have a national security classification"*.<sup>1</sup> Internal leak inquiries by both the Home Office and the Cabinet Office had been unable to find the culprit or stop the leaks. On 8 September 2008 a decision was made by the Permanent Secretary at the Home Office to write to the Police requesting an investigation. In the Department's letter to the police the Home Office stated *"we are in no doubt that there has been considerable damage to national security already as a result of some of these leaks and we are concerned that the potential for future damage is significant"*.<sup>2</sup>

As part of the investigation a junior Home Office official (Christopher Galley) connected to the private office of the Home Secretary was arrested on 19 November 2008 for passing on information to Damian Green MP. Mr Green was then arrested on 27 November 2008 for *"conspiring to commit misconduct in a public office"* and *"aiding and abetting, counselling or procuring misconduct in a public office"*.<sup>3</sup> Controversially as part of this investigation the House Authorities allowed Police to search Damian Green's office without a warrant.

On 16 April 2009 the Criminal Prosecution Service (CPS) dropped the case saying there was no realistic prospect of securing a conviction against either Christopher Galley or Damian Green MP.

<sup>1</sup> Pg. 6 House of Commons Home Affairs Committee *Policing Process of Home Office Leaks Inquiry Fourth Report of Session 2008-09*

<sup>2</sup> Pg. 6 House of Commons Home Affairs Committee *Policing Process of Home Office Leaks Inquiry Fourth Report of Session 2008-09*

<sup>3</sup> BBC Article 'Q&A: Damian Green affair' [http://news.bbc.co.uk/1/hi/uk\\_politics/7754099.stm](http://news.bbc.co.uk/1/hi/uk_politics/7754099.stm)

Interestingly the CPS lawyer also added that- *“My conclusion should not be misunderstood. The unauthorised leaking of restricted and/or confidential information is not beyond the reach of the criminal law. The fact that the overall evidence of damage or potential damage in this case is not such that the offence of misconduct in public office is made out should not be taken to mean that the absence of sufficient damage actual or potential will always lead to a decision not to prosecute.”*<sup>4</sup>

The Home Affairs Select Committee also went on to criticise the Home Office and the Cabinet Office for over-estimating the actual and potential damage to national security when requesting a police investigation.<sup>5</sup>

### **The Milton Keynes Journalist Case**

In 2007, Sally Murrer was a part-time journalist working for the *‘Milton Keynes Citizen’*. She wrote a story about the star striker of the town’s football team being arrested at a private party. She was then accused of aiding and abetting misconduct in public office as it was alleged she broke the story by obtaining Police information illegally from Mark Kearney (a police sergeant). A third man who was a private detective was also charged with similar offences.

Further chargers were brought forward around other articles as evidence that Murrer had obtained the disclosures illegally. They included a phone conversation where Kearney reminded Murrer she had written an earlier piece about a suspected murder suspect being convicted for selling cannabis. The final piece of evidence the Police had was a taped phone conversation between the pair about an Islamist being released early from prison even though he had boasted about building a bomb, however this story was never published.

Nick Cohen in his piece for the Guardian sets the scene for the arrest-

*“The security services planned the arrest of the journalist with painstaking care. They bugged her contacts and assembled an elite squad to take her down. On 8 May 2007, eight detectives swarmed into her home and seized her address book, mobile, laptops and bank statements. In a simultaneous raid, a second team searched her newspaper office - going through everything from filing cabinets to boxes of Cup-a-Soup by the office kettle.*

*Once in custody, detectives kept her isolated from her two teenage daughters and autistic son for 24 hours. Then they began the grilling.*

*‘You could go to prison,’ they told her.*

*They let her go, but soon hauled her back in. Before her second interrogation, they left her shivering in a cell. Before her third, a woman officer put on rubber gloves and strip-searched her.*

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<sup>4</sup> Decision on prosecution - Mr Christopher Galley and Mr Damian Green MP 16/04/09 Crown Prosecution Service

<sup>5</sup> Pg. 8 House of Commons Home Affairs Committee *Policing Process of Home Office Leaks Inquiry Fourth Report of Session 2008-09*

*After that, 'I just lost my ability to think coherently,' Sally Murrer said. 'My brain went to cotton wool.'"<sup>6</sup>*

In November 2008 the case collapsed when the trial judge threw the case out after ruling the taped phone conversation was inadmissible due to European laws that protected the rights of journalists and their sources. Even with this ruling the Police issued a statement saying they acted properly going on to say *"the leaking of sensitive information is a serious matter which can jeopardise police investigations, put officers and members of the public at risk and lead to criminal and misconduct charges,"* and *"The public has a right to expect that officers and police staff who have access to sensitive information can be trusted to handle the material appropriately."*<sup>7</sup>

### **The HMRC 'Sweet Heart Deals'**

On 14 December 2011 the Public Accounts Select Committee (PASC) published a report that heavily criticised the HMRC for creating special deals over outstanding tax bills for large corporations and then seeking to hide these arrangements from scrutiny.<sup>8</sup> Part of the evidence that the Committee drew on came from a HMRC tax lawyer Osita Mba who also raised his concerns with a second Select Committee and the National Audit Office (who following the PAS report carried out their own critical review).<sup>9</sup>

The report specially raised the concern that Mba may be victimised for coming forward with these issues and asked the department not to pursue him. Following the fall-out from the PASC report that Committee's Chair Margaret Hodge was quoted as saying *"Given the department's failures in these cases, the whistleblowers were absolutely right to be concerned"*.<sup>10</sup>

Again in January Hodge said *"I think the evidence given by the whistleblower (Mba) has been hugely important in uncovering vital issues and we would want to ensure that he was properly treated and that his rights under the whistleblowing legislation are properly protected."*<sup>11</sup>

In early part of June this year the Guardian reported that the Information Commissioner's Office (ICO) has launched an inquiry into the way HMRC investigators obtained the personal information of Mba and his wife (Claudia Mba). The ICO received documents that show in October 2011 HMRC managers sent personal information, including Claudia Mba's address and four phones numbers to the Department's Criminal Investigations Unit. The article reports that insiders within HMRC still blame Mba's whistleblowing disclosure for the retirement of the permanent secretary for tax David Harnett.

Claudia Mba is quoted in the article as saying that she believes HMRC were trying to intimidate her husband and that though he was still employed by the Department he had not returned to work since giving evidence to the Select Committee.

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<sup>6</sup> 'Meet Sally. Her case should scare us all' Nick Cohen The Guardian 21/09/2008

<sup>7</sup> 'Thames Valley police leak case against Sally Murrer thrown out' Leigh Holmwood The Guardian 28/11/2008

<sup>8</sup> House of Commons Committee of Public Accounts, HM Revenue & Customs 2010-11 Accounts: Tax disputes Sixty-first Report of Session 2010-12

<sup>9</sup> Audit Office Attacks Tax Deals for Corporations, Rajeev Syal and Shiv Malik, The Guardian, Thursday 14 June 2012

<sup>10</sup> *ibid*

<sup>11</sup> Tax Disputes: MPs Defend HMRC Whistleblower, Andrew Goodall, Tax Journal, 05 January 2012

Concern over this recent development has also been expressed by members of PASC. Committee member Stephen Barclay MP stated- *"This is a concerning development. We have taken a very close interest in a whistleblower who we regard as having provided information of public interest to parliament. Clearly we will need to see the details but there is a sense of mistakes being compounded with further mistakes."*<sup>12</sup>

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<sup>12</sup> Information Commissioner Investigates HMRC over Whistleblowing Inquiry, Rajeev Syal, The Guardian, Thursday 7 June 2012