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From: "Timothy Le Cocq \ (Solicitor General)"

To: "William Bailhache" [REDACTED]

CC: "Timothy Le Cocq \ (Solicitor General)"

"John Edmonds" [REDACTED]

Date: 14/10/2009 14:01:48

Subject: FW: [REDACTED] charging opinion

Attachments: [REDACTED] Charging Opinion.pdf

Are you taking the decisions on this one and the others or am I?

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-----Original Message-----

From: Stephen Baker [REDACTED]

Sent: 14 October 2009 14:33

To: William Bailhache; Timothy Le Cocq (Solicitor General)

Cc: John Edmonds; Simon Thomas; Clara Hamon

Subject: [REDACTED] charging opinion

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William, Tim,

Herewith [REDACTED] charging opinion. The police agree with my advice.

Steve

Stephen Baker

Partner

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██████████ complaint of ██████████

Charging Opinion

1. These papers came to me on 14th September 2009 for an opinion on the possibility of charges being brought.

██████████ Personal History

2. I am instructed that ██████████ was born on ██████████ 1931 (Police Report P1). If that is so, he is now 78 years old.
3. He currently lives in ██████████
4. He was employed as an ██████████ at Haut de la Garenne children's home in Jersey from February 1954 until March 1956, and again from July 1959 until April 1961. These are the dates supplied by him to the police in an interview under caution, and I am instructed that they are confirmed by records held within the data collated as part of the overall historic abuse enquiry (Police Report P3).

Allegations of ██████████

5. ██████████ complains that when he was 7 years old and in the care of ██████████ at the children's home, ██████████ abused him. Put briefly, over a period of a month or six weeks, invariably at night, the allegation is that ██████████ would lead ██████████ from his dormitory to ██████████ flat within the home and would there strip ██████████ and force him to engage in mutual masturbation to the point at which ██████████ would ejaculate.

Difficulties about dates

6. There are some difficulties over dates. A fixed point is provided by ██████████ date of birth, namely ██████████ 1950. The difficulties come thereafter and centre upon the dates of ██████████ periods of employment at Haut de la Garenne.

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7. The police report (P1) states that [REDACTED] residence at the home was between '1957 and [REDACTED] 1965 (taken from HDLG records)'
8. At paragraph 1 of his statement of complaint (8.5.08) [REDACTED] dates his residence at the home as 'between 1957 and [REDACTED] 1965'.
9. The key problem about dates is as follows. In 1957 [REDACTED] would have been either 6 or 7 years old depending on the time of year. He puts his age at 7 years at the time of entering the home (statement para.2). It is his case that [REDACTED] was already at the home at that time. It is his further case that upon his arrival, [REDACTED] began immediately to abuse him: '**When I first arrived there and at the age of 7 years he used to come into the junior dormitory and take me by the hand ...He would then lead me to his room**' [and abuse in the form of mutual masturbation would take place].
10. Demonstrably, this is incorrect. I refer again to [REDACTED] accepted dates of employment at the home which in summary are from 1954 to 1956 and from 1959 to 1961. [REDACTED] cannot have been abusing [REDACTED] at the home at any time in 1957. He simply wasn't there.
11. [REDACTED] was not at the home during [REDACTED] first spell of duty there. [REDACTED] second spell of duty began only in July 1959, at a time when [REDACTED] was 9 years old.
12. It is true that after this passage of time – more than half a century – [REDACTED] memory might easily have slipped to the extent of a couple of years. As against that, however stand the facts i) that [REDACTED] is insistent that he was 7 years old at the time of the alleged abuse (paras.1, 2, 7, 9 and 37) and ii) that he links the abuse immediately to the time of his arrival at Haut de la Garenne which he places at age 7 and which, on my instructions, is supported by independent records. I repeat that [REDACTED] simply was not there at that time.

Other Difficulties

13. Suppose – and it is a big supposition - that this difficulty could be glossed over and it was enough to say that [REDACTED] and [REDACTED] respective time at the home did overlap for a couple of years, what then of the complaint?
14. This is a complaint about events said to have taken place 52 years ago.
15. It is a complaint of a sexual offence and as such would attract the corroboration warning. There is no corroboration.
16. [REDACTED] says that he was taken from the junior dormitory. He gives no detail of other occupants of the junior dormitory at the material time and there are no statements in support from any such occupants.
17. I add that a jury may be sceptical about the notion of an offender visiting a dormitory in the silence of the night and removing and then returning a child in the way suggested, thus taking this obvious risk of detection, which would be well known to him, in pursuit of his abuse.
18. [REDACTED] says that at the time of the alleged offending he complained to the second in command at the home, a Mr Mallinson, now deceased. He says of Mr Mallinson's response: ***'I think that he hit me and told me not to tell lies'***. This is implausible on two counts. Firstly the complainant's lack of certainty about what would have been a wounding injustice even - perhaps particularly - to a child would be likely to trouble a jury. Secondly, a jury might well find it difficult to accept that this would have been the response by a person in a senior position in an institution which can be shown throughout to have kept careful records and to have logged even trivial complaints.
19. This is the only complaint against [REDACTED] by anyone, concerning the 4 years of his service at Haut de la Garenne. That is not a usual pattern in



cases of carers said to have engaged in sexual abuse of those in their long term care within a closed institution.

20. The criminal conduct is said to have been limited to a month or six weeks. Again, that is not a usual pattern in cases of carers said to have engaged in sexual abuse of those in their long term care within a closed institution.

21. I am not instructed that [REDACTED] is of other than good character generally.

22. I have no instructions about [REDACTED] criminal antecedents but notice from his statement that he volunteers that in the past he has both broken into a house and also [REDACTED] (statement para. 30).

23. I have no instructions about any mental health problems suffered by [REDACTED] currently or in the past.

24. I note from my instructions that [REDACTED] was ***'emotional, shaking and crying during his contact with the police and it was clear to the interviewing officers that this experience had caused him extreme distress.'*** By the same token, however, I notice that [REDACTED] elected to answer all questions put to him and declined any form of legal advice. He denied the allegations and is described as ***'flabbergasted that such claims could be made.'*** He suggested that [REDACTED] perhaps had mental problems.

Application of the prosecution tests

25. In reaching a conclusion about whether criminal proceedings should be brought against [REDACTED] I have had recourse to the Code on the Decision to Prosecute published by Jersey's Attorney General on 10th January 2000, and to the Code for Crown Prosecutors published by the Crown Prosecution Service in 2004. No material differences of principle have been identified between those two documents and regard has been had to both.

26. I have applied the evidential test first. In accordance with that test there is a need to be satisfied that there is a realistic prospect of conviction against the accused on each charge. That has been taken to be an objective test centring on the essential question of whether a properly instructed jury would be more likely than not to convict. It has been noted that the answer must take into account both the admissibility and reliability of the evidence; it must also take into account what the defence may be, and the effect of that defence on the prosecution case.

Conclusion

27. In this case, I have been unable to conclude that there is a realistic prospect of conviction on the matters of which complaint has been made. I have had particular reference not only to the difficulty about dates but also to the other individual difficulties which I have attempted to summarise. I take the view that the fact finders would conclude that the evidence is of insufficient quality to merit a conviction, taking into account what is known about the defence case. This approach to the application of the Code is that given by the divisional court in R on the application of B v DPP, Equality and Human Rights Commission intervening [2009] EWHC 106 (Admin). The evidential test is not, in my view satisfied, and therefore I have not gone on to consider the public interest test.
28. For the reasons which I have attempted to make clear it is my opinion that no further action against [REDACTED] is warranted.
29. I note that the officers with conduct of the investigation are of the opinion that the evidence is insufficient to warrant a prosecution. I have not been influenced by that view in reaching my own opinion but have come to share it after thorough examination of the papers made available to me.

BakerPlatt

12th October 2009