In the Crown Court at Manchester

Sitting at Salford Quays

The Queen

and

Peter Metcalf

Donald Denton

Alan Foster

RULING ON SUBMISSIONS OF NO CASE TO ANSWER

This ruling will be handed down at 10.30 a.m. on 26 May 2021 which will deemed to be the point at which the decision is made.

It is provided now to allow the parties time to consider what if any steps to take as a result of the ruling. It is embargoed until 10.30 a.m. on 26 May 2021 with consideration of the same being strictly restricted to counsel, instructing solicitors, the Crown Prosecution Service and the defendants.

Introduction

1. The Defendants are charged with doing acts tending and intended to pervert the course of public justice. The allegations arise from the aftermath of the tragic events in April 1989 at Hillsborough Stadium in Sheffield. Mr Metcalf is a solicitor. In 1989 he was in private practice. He was instructed by Municipal Mutual Insurance Company, the insurers of South Yorkshire Police (SYP), to advise in relation to any legal process which might follow on those tragic events. One matter on which he advised was the content of accounts provided by SYP officers who had been on duty at Hillsborough on the day in question. Mr Denton and Mr Foster in 1989 were senior officers in the SYP. They were involved in dealing with those accounts at one or more stages of the process. The essence of the case against the defendants is that they were responsible for amendment and alteration of accounts in such a manner as to tend to pervert the course of public justice and that, in their activity, they intended to pervert the course of public justice. Each defendant now submits that there is no or no sufficient evidence fit for the consideration of the jury on any count on the indictment.
2. Mr Metcalf is also alleged to have acted in a manner which had the tendency to pervert the course of justice in relation to civil proceedings in 1990. This allegation is separate to the allegation concerning the amendment or alteration of police officers' accounts.
3. Mr Metcalf is charged on two counts. The particulars of Count 1 are:
   PETER CHARLES METCALF, between the 15th day of April 1989 and the 2nd day of August 1989, with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice in that he provided advice on the amendment or alteration of accounts of South Yorkshire Police officers in respect of events at Hillsborough Stadium on 15th April 1989 that he knew were to be provided to West Midlands Police.
   As is apparent from the particulars this count relates to the alleged amendment or alteration of accounts. The immediate context of the advice he provided was the Public Inquiry into the Hillsborough Disaster conducted by Lord Justice Taylor (as he then was). The West Midlands Police (WMP) was the investigative force in relation to the Inquiry. The accounts were provided to the Inquiry.
   Count 2 is particularised as follows:
   PETER CHARLES METCALF, on or before the 19th day of July 1990, with intent to pervert the course of public justice, did an act which had a

tendency to pervert the course of public justice in that he drafted an addendum statement and advice in respect of the account of four South Yorkshire Police officers concerning the monitoring of pens in the stands at Hillsborough Stadium and sent the said advice and addendum statement to Peter Hayes.

The statement and advice provided by Mr Metcalf on this occasion was in relation to contribution proceedings. SYP had admitted liability to those killed or injured in the disaster. The force was seeking contribution from other parties in the context of the civil proceedings. The addendum statement was proposed for use in the context of those proceedings.

4. Mr Denton is charged on Counts 3 and 4 of the indictment. In his case both counts concern accounts provided to the Taylor Inquiry. Count 3 is as follows:

   DONALD DENTON, between the 15th day of April 1989 and the 2nd day of August 1989, with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice in that he ordered the amendment or alteration of accounts of South Yorkshire Police officers in respect of the events at Hillsborough Stadium on 15th April 1989 that were provided to West Midlands Police.

   It is alleged that he ordered the amendment of SYP officers accounts.

   Count 4 is in similar terms but it relates to the provision of amended or altered accounts to WMP.

   DONALD DENTON, between the 15th day of April 1989 and the 2nd day of August 1989, with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice in that he provided to West Midlands Police accounts of South Yorkshire Police officers in respect of events at Hillsborough Stadium on 15th April 1989 that he knew had been altered or amended.

   The allegation is that, once amended or altered, he provided the accounts to WMP in full knowledge of the amendments or alterations.

5. Mr Foster is charged on Counts 5 and 6 of the indictment. As with Mr Denton the counts concern the accounts provided to the Taylor Inquiry. Count 5 is particularised in these terms:

   ALAN FOSTER, between the 15th day of April 1989 and the 2nd day of August 1989, with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice in that he amended or altered the accounts of South Yorkshire Police officers in respect of the events at Hillsborough Stadium on 15th April 1989 that he knew were to be provided to West Midlands Police.

The allegation is that Mr Foster amended or altered accounts. Count 6 concerns accounts where he ordered the amendment or alteration.

ALAN FOSTER, between the 15th day of April 1989 and the 2nd day of August 1989, with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice in that he ordered the amendment or alteration of the accounts of South Yorkshire Police officers in respect of the events at Hillsborough Stadium on the 15th April 1989 that he knew were to be provided to West Midlands Police.

6. The core of the prosecution case is as follows, the paragraph numbers being taken from the written opening note. The case as opened to the jury was exactly as had been reduced to writing.

These three tried to minimise the blame that might be heaped upon the South Yorkshire Police at the many different forms of enquiry that followed that dreadful day. They did this by altering accounts given by police officers who were present on the day. They knew that those accounts were inevitably going to end up being sent to a number of Inquiries that would follow the Hillsborough disaster: for example, an inquiry into the safety of football grounds, the inquest, civil proceedings and criminal proceedings. [4]

The effect of the alterations was to mask failings on the part of South Yorkshire Police in their planning and execution of the policing of the football match. [13]

...between 10th May and 1st August, Mr Metcalf sent a total of 28 faxes advising amendments to officers' accounts. The amendments were heavily focused on amending the parts in the accounts of officers which were critical in the areas set out in the Salmon letter. [97]

Although the accounts were amended for the Taylor Inquiry, it is clear that the process was put into place with wider considerations in mind. Everyone knew that there would be inquests, civil claims, police disciplinary proceedings and a criminal investigation. [105]

It is important to understand that the vetting process was targeted at reducing or removing references to failings by the SYP with specific reference to the topics set out in the Salmon letter. [146]

On 19th July 1990, Mr Metcalf wrote to DCC Hayes concerning the question of monitoring of pens. Mr Metcalf suggested that there had been ambiguity in the evidence of the officers who gave evidence before Taylor LJ about this issue and that those officers who had dealt with it in a way adverse to SYP's interests on the point should be asked to review their evidence.

Mr Metcalf went so far as to send a draft statement that he had himself composed, setting out what he wanted the officers to say. It is right to say that the letter concluded by observing that there was no point in any officer putting forward evidence which he did not think he could honestly sustain in cross examination. The point is, however, that Mr Metcalf was seeking to put words into the mouths of officers, changing evidence that they had given to the Taylor Inquiry, when he had no idea of what they might actually wish to say. [177/178]

....amending witness statements in the manner that I have described is, the prosecution say, improper and in breach of the duties of a solicitor. [198]

....Peter Metcalf's conduct was improper, to use a neutral word, in a number of respects:

(i) The SYP had a duty of candour to the Taylor Inquiry. The SYP are a taxpayer-funded organisation and the officers are public servants. A public inquiry set up at public expense is entitled to expect that public authorities participating in it will assist the Inquiry in reaching the truth. You may think that this is especially important when the Inquiry has been set up specifically to find out what went wrong and to make recommendations to ensure the future safety of people attending football matches.

(ii) It is improper to put words into the mouth of a witness, by amending a statement, and then ask the witness to sign it, especially if pressure is put on a witness to do so.

(iii) There were obvious conflicts of interest since Mr Metcalf was representing the interests of the South Yorkshire Police as well as individual officers. Protecting the interests of one party might well have conflicted with the interests of another. [200]

7. To establish their case on all counts save Count 2, the prosecution have relied on amendments and/or alterations to 68 accounts provided by SYP officers. There has been no substantive challenge to what happened in relation to those 68 accounts. The prosecution argue that there are clear and permissible inferences to be drawn from the amendments and/or alterations both as to the tendency created by them and the intent with which they were carried out. They say that those should be matters for a jury to consider. They rely also on contemporaneous documentation to demonstrate what was known to the defendants and what was their apparent intention. In relation to Mr Metcalf the prosecution rely on expert evidence from Gregory Treverton-Jones QC as to the duty of a solicitor in his position in 1989. They say that the expert evidence shows that Mr Metcalf was in breach of his professional duty as a solicitor. Although the

jury have heard other expert evidence from Sir Robert Francis QC which contradicts the conclusion of Mr Treverton-Jones, the prosecution say that the conflict in the evidence should be for the jury to resolve.

8. In relation to Count 2, the prosecution rely on the evidence of Mr Treverton-Jones whose view is that Mr Metcalf was in breach of his professional duty when he provided the SYP officers with the draft of a statement. Although he told them that it would be preferable if the statement provided were written by the officer and that they should not make a statement unless they considered that what they had said at the Taylor Inquiry did not fairly state their position, Mr Treverton-Jones's opinion was that Mr Metcalf acted improperly. The essence of the prosecution position is that a solicitor acting in breach of his professional duty must prima facie be acting in a way tending to pervert the course of justice.
9. In very summary form the submissions made on behalf of Mr Metcalf in relation to Count 1 fall under three heads. First, it is said that the advice given in relation to accounts which were to be sent to WMP and thence to the Taylor Inquiry could not tend to pervert later courses of justice. Second, it is argued that the jury should not be permitted to consider the evidence of Mr Treverton-Jones in relation to a duty of candour because it is without any rational basis. Without that evidence the jury could not conclude that Mr Metcalf had departed from proper professional standards when he gave the advice he did about the accounts going to WMP. The third submission is that, on a proper analysis, the advice given by Mr Metcalf neither tended nor was intended to pervert the course of public justice. No reasonable jury could draw the inferences for which the prosecution contended.
10. In relation to Count 2, it is argued that Mr Metcalf, by now acting for SYP in civil proceedings, was entitled to draft a witness statement subject to the witness's confirmation that it was accurate. Reliance is placed on the Bar Guidance in relation to drafting of witness statements. Although the guidance was not published until 1997, it is not in dispute that the guidance represented accepted practice as at 1989. Thus, the jury could not reasonably find Mr Metcalf guilty of the offence charged since he was following ordinary professional practice.
11. Mr Denton's case is that there is no proper evidence available to the jury to show that he ordered any amendment to accounts or that, when he provided accounts to WMP, he knew that they had been amended. On his behalf it is argued further that, whatever it was that Mr Denton did or knew, that did not have any tendency to pervert the course of justice. Finally it is

said that there is no evidence that Mr Denton intended to pervert the course of public justice.

12. In relation to Mr Foster it is argued that a defendant must be proved to have known of or contemplated the existence of a course of public justice at the time of any act said to have had the tendency to pervert that course of justice. The submission made is that the jury have no reliable evidence to demonstrate such a state of mind on the part of Mr Foster. Further, it said that the outcome of the Taylor Inquiry, the preliminary report of which was issued in August 1989, meant that any subsequent proceedings could not have been perverted by anything done by Mr Foster.

The Factual History – Counts 1 and 3 to 6

13. On 15 April 1989 Liverpool were due to play Nottingham Forest in the FA Cup semi-final. The tie was to take place at Hillsborough Stadium in Sheffield. As the match got under way a disaster began to unfold at the Leppings Lane end of the ground. Over-crowding on the standing terraces led to crushing. 96 Liverpool supporters died and hundreds of others were injured, some very seriously. The match was abandoned. What followed principally is apparent from the contemporaneous documentary material. There is no dispute about the accuracy of the recording in official memoranda and the like. The jury have heard evidence from a small number of those involved at the time, namely Malcolm Ross (a WMP Chief Inspector), Belinda Norcliffe (a solicitor and a member of Mr Metcalf's team) and Sir Andrew Collins (counsel to the Inquiry). None of their evidence is in dispute.

14. On 17 April 1989 the Home Secretary announced that a full and independent inquiry was to be held. The stated purpose of the inquiry was to inquire into the events at Hillsborough on 15 April and to make recommendations about the needs of crowd control and safety at sports grounds. Lord Justice Taylor had been asked to conduct the inquiry with the assistance of assessors. The Home Secretary said that the inquiry would "proceed with all possible speed". The following day West Midlands Police (WMP) were appointed by the Home Office to investigate the disaster. One of their terms of reference recorded in their memorandum of appointment was to gather evidence on the planning and operational decisions of South Yorkshire Police (SYP) who were responsible for the policing of Hillsborough. The initial purpose of their investigations was to assist the inquiry. The memorandum of appointment stated that the evidence gathered by WMP would be available also to the Coroner.

15. From the outset it was apparent that SYP would be under close scrutiny in any inquiry into the disaster. Their insurers, Municipal Mutual Insurance, instructed Hammond Suddards, a substantial practice based in West Yorkshire, to represent the interests of SYP. The solicitor instructed was Peter Metcalf. He immediately retained the services of leading counsel, William Woodward QC.
16. On the afternoon of 19 April Mr Metcalf attended a meeting at SYP headquarters. The meeting was convened by Peter Hayes, the Deputy Chief Constable. In attendance were senior officers of SYP including Donald Denton, then a Chief Superintendent with the force and representatives of the insurers. Discussion at the meeting was wide-ranging. At an early stage Mr Hayes said that the investigation by WMP was "the Coroner's Inquiry". He explained that, in relation to "the report which must go to the Coroner as to how those people died, he would rely on the West Midlands inquiry for that purpose…" Because Lord Justice Taylor had yet to express any view, it was not known how his inquiry would be conducted.
17. The day after this meeting Mr Metcalf wrote to Mr Hayes. He said that he expected that Lord Justice Taylor would require a formal proof of evidence to be submitted by SYP. (This later was referred to as the Chief Constable's proof.) With that in mind Mr Metcalf advised that it would be necessary to have statements from as many of the officers on duty at Hillsborough as possible. In relation to junior officers, he suggested the obtaining of statements dealing with 5 issues: when they came on duty, to whom they were responsible, where they were, what they observed and what they did. Mr Metcalf said that the statements could be self-taken since they were not required for the purpose of any criminal investigation.
18. The SYP officer in charge of obtaining statements was Chief Superintendent Terry Wain. On 26 April he briefed his team. He told them that the purpose of the statements was to provide full information to the Chief Constable for the purposes of his proof of evidence. He said this: "(Our enquiry) should be looked upon as internal, narrow in scope, as evidence gathering not investigation and finally as secondary to the (WMP) enquiry." He provided a memorandum which was directed to any officer asked to provide a statement. The information required within each statement was the same as had been advised on 20 April by Mr Metcalf in his letter to Mr Hayes.
19. Later on 26 April William Woodward held a consultation at SYP headquarters. He was accompanied by Mr Metcalf. The senior police officers present included Mr Hayes and Mr Wain but not Mr Denton. Mr

Woodward advised the police to obtain written accounts from SYP officers on duty at Hillsborough. He said that they should be able to write their own statements. He said that they should include what he called 'their intimate feelings and worries'; he later said that this might even benefit them as being some kind of 'catharsis'. Mr Woodward gave explicit assurance that, since what the officers wrote was for the purpose of the SYP obtaining legal advice, what they wrote was legally privileged and confidential. It is clear that he then contemplated that the statements would only be used by senior officers as they prepared their own statements for the purposes of the Taylor inquiry.

20. As a result of the advice given by Mr Woodward, Mr Wain revised his memorandum to be given to officers who were asked to provide an account. There were two versions of the revised memorandum. One posed five further questions concluding with "officers should include in their statements, their fears, feelings and observations". The other posed three questions. Officers were asked to include in their statements what their feelings were and "any observations…regarding the policing of the event".

21. On 28 April Lord Justice Taylor held a preliminary hearing of the Inquiry. He directed that no witness would be called unless he or she had provided a written statement. There were to be two phases of the Inquiry. The first phase was to "what happened on the 15th April and why". It was to commence on 15 May with a view to an interim report being available before the start of the new football season in August. Lord Justice Taylor said that what he required was "factual evidence as opposed to mere comment or non-expert opinion". At the conclusion of the hearing counsel who then appeared to represent the bereaved and the injured sought guidance on whether statements provided to the Inquiry would be used solely for the purposes of the Inquiry and not for any wider purpose. Lord Justice Taylor did not give guidance of the kind requested. He simply stated "that point will be considered". He did point out that statements of witnesses who were called to give evidence would be available to the parties and to the press. In those circumstances "they tend to be in the public domain".

22. On the same day Mervyn Jones, the Assistant Chief Constable of WMP and the WMP officer in charge of the WMP Hillsborough operation, wrote to the Chief Constable of SYP. Mr Jones invited the senior officers who were involved at Hillsborough to provide their written recollections of events prior to and during the match. It was made clear that the invitation was for the officers to submit evidence which WMP then would pass on to the Taylor Inquiry. WMP did not propose to interview the officers. Rather,

any meeting between WMP officers and those senior officers would simply be for the collection of any written recollection.

23. On 30 April Mr Metcalf spoke on the telephone to Mr Hayes about the letter from Mervyn Jones. He expressed concern about the use to which the self-taken statements of the senior officers might be put in terms of disciplinary proceedings and in supporting HM Coroner. Mr Hayes (who was with the Chief Constable of SYP at the time) said that the Chief Constable was satisfied that the WMP inquiry had a duty only to the Judge i.e. the Taylor Inquiry.

24. The statements of the senior officers form no part of the allegations in the indictment. A memorandum written by Mr Metcalf recording his conversation with Mr Hayes states that it was agreed that it would be sensible for Mr Metcalf to see the statements before they were provided to WMP and for Mr Metcalf to have time to go through them with the officers. On 2 May he saw the officers and made "various suggestions for alterations to their statements". Whatever those suggestions may have been, nothing about this process is now impugned. At this point Mr Metcalf's impression was that the only police witnesses to be called at the Taylor Inquiry would be those senior officers. This was the inference he reached as a result of a conversation with the Treasury Solicitor on 3 May.

25. The position changed on 7 May. On that date Mervyn Jones wrote to the Chief Constable of SYP. He said that he now had been asked by the Inquiry to obtain written recollections from SYP officers who "were likely to be at Leppings Lane end, both inside and outside the ground". As a result WMP wanted as many written submissions as possible. They were to be obtained in the same way as the senior officers i.e. without any interview of the officers by WMP. Ms Norcliffe explained that, prior to the requests for written recollections, it had been assumed by those acting for SYP that WMP would obtain any witness statements in the normal way i.e. by interviewing witnesses and obtaining signed statements in the standard form for any police investigation.

26. The next day Malcolm Ross provided a list of the names of the SYP officers from whom accounts now were required. There were around 110 names on the list. Mr Denton and Terry Wain discussed the position with Ms Norcliffe who liaised with Mr Metcalf. A process was agreed as follows. Where an officer already had provided a written account, it would be read through by Mr Metcalf. If it were suitable for release, it would be provided to WMP provided consent had been given by the officer. If alterations were appropriate, Mr Metcalf would suggest them before any

consent were obtained. A later memorandum referred to "comment or matters of speculation" as material which would require advice.

27. On 9 May the Treasury Solicitor sent what is known as a Salmon letter to Mr Metcalf. This gave "a preliminary indication of criticisms which may be levelled at (SYP)" and observed that the Treasury Solicitor suspected that "you are already aware of the general thrust of the criticisms which have been made and that what is set out in this letter will come as no surprise to you". This observation was accurate. The matters referred to in the letter had been the subject of discussion at the consultation on 26 April and at other points. It is not necessary for these purposes to set out the full text of the criticisms of which there were six. In summary they were: failing to take adequate steps to control supporters outside the Leppings Lane end entrance so that the crush which built up prior to kick-off did not occur; lack of liaison between officers inside the ground and those outside - radio problems, tannoy issues and lack of police or steward presence to stop the use of the central tunnel onto the overcrowded terraces identified as particular issues; failing to monitor the state of the central pens of the terraces; lack of police reaction once the crushing became apparent with police thinking being in terms of possible pitch invasion; inadequate contingency plans to deal with the emergency as it unfolded; no consideration given to a postponement of the kick-off until it was too late.

28. On 10 May Mr Metcalf began the process of advising in relation to self-penned accounts provided by SYP police officers. His usual point of contact was Mr Denton. Mr Denton (or his office) would send Mr Metcalf batches of copies of accounts. Mr Metcalf would consider the accounts before sending Mr Denton a fax dealing with a number of accounts. He would identify each officer by name. In many cases he would do no more than that. This was understood as being advice that the account could be provided unaltered to WMP. In other cases he would advise on amendment of the account. In total between 10 May and 1 August Mr Metcalf advised in relation to 437 accounts. Some alteration of the account was advised in 167 instances. The prosecution rely on 57 of those cases to support the proposition that Mr Metcalf took steps to reduce or to remove criticisms of SYP from the accounts. They say that each of those cases goes to demonstrate the system that he adopted. The details of the dates on which a fax advice was sent and how many accounts were considered in each fax are set out in the schedule behind Tab 5 in the Metcalf General Schedules. Ms Norcliffe's evidence was that Mr Metcalf undertook this very substantial task without any assistance whether from counsel or otherwise.

29. I deal with the evidence in relation to each account on which the prosecution rely in relation to Mr Metcalf in the accompanying annex to this ruling. In that annex I set out the extent to which a reasonable jury could conclude that Mr Metcalf's acts tended or were intended to pervert the course of public justice. The annex is drafted on the assumption that the provision of the accounts to WMP was in the context of the course of public justice. This is an issue to which I shall return since it is central to the viability of the prosecution case.

30. Mr Metcalf's approach can be judged from what he did in relation to those accounts. Contemporaneous documents also shed light on this issue. The advice given by Mr Woodward on 26 April (which at that point was concerned with the evidence to be provided by senior SYP officers) was that "we must at this stage present our evidence in the most appropriate manner having an eye towards the future". Mr Woodward also said that "we would choose what we want to leave in and what we want to leave out". The minutes of the consultation do not record any response by Mr Metcalf to those remarks. Equally he must have heard them as advice given by leading counsel. On 10 May Mr Metcalf had a discussion with Mr Denton about how they were to deal with the requirement to provide WMP with the recollections of so many police officers. Mr Metcalf said that his preference was for a plain form of statement "being prepared…to stick strictly to the facts". On 11 May he sent Mr Woodward formal instructions to appear at the Inquiry. He said that "the objective to be pursued at the Inquiry is the presentation of the SYP in the best possible light consistent with the facts that are brought out".

31. The evidential hearings of the Inquiry began on 15 May. Sir Andrew Collins as Counsel to the Inquiry made some opening remarks in the course of which he said that "only witnesses who can give factual evidence will be called…This is not the stage for witnesses to give evidence of their opinions". Mr Metcalf was present when these remarks were made. On 22 May Mr Metcalf met a group of SYP officers at Snig Hill Police Headquarters. He told those officers that general criticism of Liverpool supporters should be avoided save where there was an example of specific behaviour. He also said that criticism of senior officers was being removed from factual statements because it was necessarily subjective. The officer on the pitch could not know what the match commander was doing. He could only have a feeling about it. On 23 May Mr Metcalf drafted a memo for circulation to SYP officers explaining the approach being taken by him in amending self-penned accounts. He drew a parallel between a police report to the CPS and the statements supporting the matters set out in the

report. The police report would contain comments not suitable for inclusion in any witness statement. In relation to what was said about senior officers, he said that passages critical of other officers of whatever rank would not be allowed to stand unless they were direct factual observations as opposed to matters of impression.

32. The police system in relation to accounts provided by SYP officers was as follows. The SYP officer would usually write out the account. Some officers typed their account. However it was prepared the account would be sent to the team led by Terry Wain. Mr Wain's team would type the account into the SYP Holmes system. The original account would be filed and preserved. What was sent to Mr Metcalf via Mr Denton usually was a copy of the typed version printed off from the Holmes system. Once he had reviewed the account Mr Metcalf would fax Mr Denton in the manner already described. In Mr Denton's absence the fax would be sent to Mr Foster. In either event the fax would make its way to Mr Foster. When an amendment to an account was identified by Mr Metcalf, Mr Foster or one of his colleagues (generally a Detective Inspector Jones) would amend a copy of the original account by making handwritten entries. This copy then would be taken to or provided to the officer concerned by a member of Mr Wain's team for the officer's agreement to the amendment. Once agreed the account would be retyped to incorporate the amendment and submitted to the officer for signature. The amended statement would be sent to Mr Denton or someone in his office for onward transmission to WMP. WMP then typed the amended account into the WMP Holmes system. WMP would provide the amended account to the Taylor Inquiry.

33. This system broke down on occasion. There were instances of the Taylor Inquiry being provided with both the original account and the amended account. How this occurred is impossible to determine on the evidence before the jury. It happened in relation to two accounts on which the prosecution rely as part of their case. In one case – a P.C. Huckstepp – this led to correspondence between WMP, SYP and the Treasury Solicitor. The Treasury Solicitor communicated the view of Sir Andrew Collins which was that there was no reason for excluding expressions of opinion from statements. However, this correspondence did not involve Mr Metcalf. Moreover, Sir Andrew Collins made no comment about whatever changes had been made to the officer's statement.

34. There were some accounts which were not seen or considered by Mr Metcalf. This arose because there came a point at which WMP were asking for accounts from SYP officers who had not been on duty at or near the Leppings Lane end. Some had been on duty at points en route to the

ground. Others had been on duty at the Nottingham Forest end. On 22 May Mr Metcalf and Mr Denton agreed that these accounts would be vetted by Mr Denton or Mr Foster with reference to Mr Metcalf only in the event of particular problems. In fact, Mr Denton did not vet any statements. This task was undertaken by Mr Foster or a member of his team.

35. There are nine accounts on which the prosecution rely where Mr Foster was responsible for or oversaw the amending process i.e. instances in which Mr Metcalf had no involvement. In three cases – Childs, Nield and West – the effect of the amendment was to delete passages describing the emotions of the officer e.g. "I felt helpless". Such deletion removed nothing of any relevance to the officer's factual narrative. A minor amendment of no real significance was suggested to the account of an officer named House. The officer said that he wished to maintain his account in full. Mr Foster did not make the amendment. An officer named Botfield rewrote a sentence in his account having been asked to review it by Mr Foster. The sense of the account remained unaltered. Various deletions were made from the account of McLoughlin. These were comments or opinion, not factual narrative.

36. There were three accounts – Finnerty, Smyk and Fillingham – from which references were removed which could be considered as references to factual matters: a PC arguing with an Inspector about opening a gate (Fillingham); no senior officers being on the playing area (Smyk); lack of personal radios (Finnerty). As with Mr Metcalf whether this could be considered by the jury to be acts tending and intended to pervert the course of public justice will depend on whether such a course can be identified.

37. All of the officers on whose accounts the prosecution rely signed the account in due course forwarded to WMP. Where the account was amended they agreed to the amendment. The jury have not heard evidence from any of the officers about that process save in three instances: Finnerty, Groome and Walpole. Each of those officers at some point discussed their account with Mr Foster. The evidence of Finnerty and Walpole was read as agreed evidence. Walpole's view was that opinions he had expressed had been removed but all the material facts remained. Finnerty was told that his thoughts and feelings had been removed as a result of legal advice. He was angry about this because he originally had been told to include these matters. Groome died between the making of his statement and the start of the trial. His evidence was read pursuant to Section 116 of the Criminal Justice Act 2003. Had he been alive Groome would have been required to give evidence. The particular point at issue was whether Mr Foster had referred to possible use of the account in any Coroner's Inquest.

The Factual History – Count 2

38. The Taylor Inquiry heard evidence from four ranking SYP officers named Creaser, Darling, Calvert and Sewell. Their evidence dealt inter alia with the issue of monitoring the pens at the Leppings Lane end. In their accounts (whether amended or unamended) they had not stated that SYP had responsibility for this. The Taylor Inquiry (in paragraph 166 of its interim report issued in August 1989) concluded that SYP had de facto accepted this responsibility.
39. In the civil proceedings brought by the bereaved and the injured SYP effectively admitted liability. Contribution proceedings were brought against other parties including Sheffield Wednesday Football Club. The club employed stewards. One issue was the responsibility of stewards to monitor the pens. The Taylor Inquiry report (at paragraph 167) had noted that SYP accepted that stewards could not carry out this task.
40. In May 1990 directions were given in relation to the contribution proceedings. It was ordered that transcripts of evidence from the Taylor Inquiry would be admissible in evidence at the trial of those proceedings. It was further ordered that any evidence not recorded at the Taylor Inquiry was to be served by way of a witness statement no later than 31 July 1990, the trial of the contribution proceedings being listed for October 1990.
41. For a variety of reasons the issue of monitoring became important in the proceedings. On 19 July 1990 Mr Metcalf wrote to Mr Hayes. He noted the importance of monitoring as an issue. He observed that many SYP officers who had given evidence had said that they did not consider that they were under any obligation to monitor the pens other than to keep an eye on the crowd and to react to any situation which arose. He went on to say that other officers had gone further than this naming the four ranking officers to whom I have referred above. He told Mr Hayes that he wanted to understand whether the officers, on reviewing the Inquiry transcript, agreed that it gave a true flavour of what they wanted to say. He posed the question: were these officers expecting SYP officers to be making regular assessments of the pens to check if they were full with a view to closing them off if they were?
42. When he wrote to Mr Hayes, Mr Metcalf enclosed a draft statement for the officers to consider. He described it as "a draft format" and said that, so long as the points were covered, it would preferable if the statements were self-taken to preserve individual style. He also said that a further statement was needed only if the officers considered that the Inquiry transcript did not fairly state their position.

43. All four officers were spoken to in the terms advised by Mr Metcalf. Each indicated that they did not wish to make a further statement and that the transcript was a fair reflection of his position. The matter was taken no further.

The legal framework

44. The proper approach to a submission of no case to answer is very well-established. I set it out here simply to confirm the approach I shall take. The classic test is set out in *Galbraith* [1981] 1 WLR 1039 at 1042:
"How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case."
45. In relation to a case based on inferences, Aikens LJ summarised the principles in *Goddard* [2012] EWCA Crim 1756 at [36]:
"(1) in all cases where a judge is asked to consider a submission of no case to answer, the judge should apply the 'classic' or 'traditional' test set out by Lord Lane CJ in Galbraith. (2) Where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the exercise of deciding that there is a case to answer does involve the rejection of all realistic possibilities consistent with innocence. (3) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury."
46. The Taylor Inquiry did not amount to proceedings conducted "in the course of public justice". This was the conclusion of Sir Peter Openshaw when he considered applications to dismiss in 2018. The prosecution have not sought to re-open the argument on this point. The trial has been conducted on the basis that his conclusion was correct. It would be wholly wrong for

me to re-visit the point now. In any event I am satisfied that Sir Peter was entirely correct.

47. The Taylor Inquiry was not a court of law. It was a non-statutory departmental inquiry exercising an administrative or executive power. As a non-statutory inquiry it had no power to compel witnesses and it did not take evidence on oath. In *Attorney-General v BBC* [1981] AC 303 Lord Scarman drew the distinction between a court exercising the judicial power of the state and a body established for a purely administrative purpose. This was in the context of a decision that a local valuation court was not a court of law for the purposes of contempt. However, the principle is of general application. Public justice does not include the latter body. The position of a non-statutory inquiry was addressed directly by the Privy Council in *Badry v DPP* [1983] 2 AC 297. An inquiry of that kind was held not to be protected at common law.

48. It is unnecessary to set out in further detail the arguments put by the prosecution before Sir Peter, those arguments including an invitation to extend the law so as to encompass non-statutory departmental inquiries within the definition of public justice. I am satisfied that they are without proper substance.

49. In 1989 an inquest by HM Coroner was conducted by reference to the provisions of the Coroners Act 1988. Section 11(5) of the 1988 Act was as follows:

An inquisition— (a) shall be in writing under the hand of the coroner and, in the case of an inquest held with a jury, under the hands of the jurors who concur in the verdict; (b) shall set out, so far as such particulars have been proved— ***(i) who the deceased was; and (ii) how, when and where the deceased came by his death;*** *and (c) shall be in such form as the Lord Chancellor may by rules made by statutory instrument from time to time prescribe.*

The ambit of a Coroner's Inquest since the introduction of the Human Rights Act 1998 has widened. Where Article 2 considerations arise, Section 5 of the Coroners and Justice Act 2009 requires the inquest to investigate the circumstances of the death as well as how the deceased died which is a much narrower question. Plainly the Human Rights Act and the 2009 Act were not in force in 1989.

50. I have no evidence of the precise nature of the police disciplinary process in 1989 as it affected SYP officers. It is reasonable to assume that it involved some kind of disciplinary tribunal in the event that the relevant senior officer considered that there was a case for the tribunal to consider. The tribunal would have the power to exercise sanctions of the officer

whose conduct was impugned. Such a tribunal would not be engaged in an exercise of public justice. In *GMC v BBC* [1998] 1 WLR 1573 consideration was given to the position of the Professional Conduct Committee of the General Medical Council as it then was constituted. The committee exercised disciplinary powers over registered medical practitioners. The committee was found not to be a judicial body exercising the power of the state. It was not protected at common law for the same reasons as applied to a non-statutory inquiry.

51. In their written response to the submissions made on behalf of Mr Metcalf, it is said that "whether disciplinary proceedings are a course of justice is a matter for consideration at a later date if it becomes necessary". It is necessary for me to consider the issue now because it is relevant to whether the acts tended to pervert the course of public justice. I am satisfied that disciplinary proceedings do not form a course of public justice.

52. Criminal and civil proceedings clearly are a course of public justice. For the offence alleged here to have been committed, it is not necessary for any proceedings yet to have been instituted: *Cotter* [2002] 2 Cr App R 29; *USA v Dempsey* [2018] 1 WLR 110.

53. The offence requires the conduct to have a tendency to pervert the course of justice, pervert being a strong word. It was referred to in *DPP v Withers* [1975] AC 842 in these terms at 867:

To be punishable as conduct tending to pervert the course of justice the conduct must be such as can be properly and seriously so described. "Pervert" is a strong word (cf. "corrupt" and "outrage" as explained in Knuller).

54. There is little guidance on what the meaning of "tendency" is in the context of the offence. Many cases concern acts which plainly would pervert the course of justice if allowed to follow through to their natural conclusion. In *Murray* [1982] 1 WLR 475 the terms "tendency" and "possibility" were used interchangeably to define tendency. That was in the context of a man who had tampered with a blood sample taken in the context of a drink driving offence. That act was bound to pervert the course of justice once the blood sample was relied on in any proceedings. Thus, the question of "possibility" arose in terms of the likelihood of the sample being so used. In this case the issue is what effect the relevant altered statements would have had in the event they had been used in the course of public justice. In *Fender v St John Mildmay* [1938] AC 1 the meaning of tendency was considered in circumstances which are not of relevance to the facts of this case. Lord Atkin said at 13:

But assuming, as we must, that the harmful tendency of a contract must be examined, what is meant by tendency? It can only mean, I venture to think, that taking that class of contract as a whole the contracting parties will generally, in a majority of cases, or at any rate in a considerable number of cases, be exposed to a real temptation by reason of the promises to do something harmful, i.e., contrary to public policy; and that it is likely that they will yield to it.

Reading across to the offence, I conclude that, for an act to have a tendency to pervert the course of justice, there must be a significant risk that it will have that effect.

The expert evidence

55. Two expert witnesses have given evidence in relation to the duties of a solicitor in 1989. Gregory Treverton-Jones QC was called by the prosecution. Sir Robert Francis QC was called on behalf of Mr Metcalf. Although Sir Robert was called as a defence witness and his evidence was adduced prior to the close of the prosecution case for reasons of good case management, his evidence is part of the material to be considered in assessing whether the prosecution have established a prima facie case.
56. The propositions underlying the expert evidence were uncontroversial. The primary duty of any solicitor is to act in the best interests of his client. In the absence of good and proper reason to the contrary, a solicitor must follow his client's instructions. However, a solicitor is also an officer of the court. As such he has a duty to the court which takes precedence over any duty owed to his client. A solicitor must not mislead the court in representing the client and presenting the client's case. This duty to the court relates to any act by the solicitor which is positively misleading. In conventional proceedings a solicitor may be in a position where he realises that the court is acting on a false basis. Provided the solicitor does not contribute to the misapprehension of the court, he has no duty to correct the court or to draw the court's attention to the true position. In relation to the calling of witnesses, the solicitor is under no duty to call a witness whom he knows will correct any misapprehension if to do so will not be in the best interests of his client. Further, the solicitor is entitled to adduce only such evidence from a witness which assists his client's case so long as the omission of other matters does not render misleading the evidence being given.
57. A solicitor also has a duty not to act for a client if there is a conflict of interest. This can arise in one of two ways. First, there may a conflict between the interests of the solicitor and of the client. This was not of any

relevance to the facts of this case. Second, a solicitor cannot act for two clients if they have different and divergent interests. By definition, a solicitor in that position will not be able to act in the best interests of both clients.

58. In relation to witnesses and witness statements, a solicitor properly can draft a witness statement and/or advise on the draft prepared by the witness. In 1989 there was no published guidance in relation to the drafting of witness statements. The guidance published in 1997 by the Bar Council represented good practice as at 1989.

59. The principal divergence of opinion between the two experts was in relation to the duty owed by a publicly funded body to a public inquiry and the concomitant duty owed by the solicitor acting for such a body. Mr Treverton-Jones said that there was a duty of candour to an inquiry, particularly when the inquiry related to a major event involving multiple fatalities and causing public concern. This was not a legal duty i.e. one enforceable by the courts. In relation to the public body itself, Mr Treverton-Jones categorised the duty as a public duty. So far as the solicitor was concerned, he said that it was part of the solicitor's professional duty. When asked to define the duty of candour more precisely, he said that it was a duty not to supress relevant evidence. He agreed that there is no reported case identifying a duty of candour of the kind he proposed. Nor was there any reference to such a duty in any of the academic literature. Mr Treverton-Jones is a practitioner with a very wide professional experience of solicitors' disciplinary work. He is the author of a standard text on the topic. He knew of no case where any solicitor had been disciplined by the SDT for breach of a duty of candour.

60. Mr Treverton-Jones said that the solicitor's duty in relation to an inquest was "very much the same" as in relation to a public inquiry. He said that "he would have thought that the duties would be much the same". He explained that this was because an inquest was also an inquisitorial process. He did accept that the purposes of an inquest in 1989 were very much narrower than the stated purpose of the Taylor Inquiry. He offered no view on how the duty of candour was to be adapted to allow for this.

61. Sir Robert did not accept any such duty of candour existed. He relied on the fact that legislative change had been proposed to introduce such a duty in the context of assisting public inquiries. The duty was to be imposed on public authorities. The relevant bill failed to make sufficient progress to lead to any duty being imposed. In relation to a solicitor's duty in the context of a public inquiry and/or an inquest, he cited the case of two solicitors who had altered the report of a consultant requested by a coroner.

He was aware of the case because it had arisen in the context of a public inquiry he had chaired. Those solicitors had not been subject to any disciplinary action.

62. There was some debate between the experts about the relevance and effect of a solicitor's duty not to act when he has a conflict of interest. Although potential conflict was cited by the prosecution in opening the case, the outcome of the debate is not relevant to the issues I have to determine at this stage. It is not suggested in terms that Mr Metcalf was acting in breach of his professional duty vis-à-vis any conflict of interest.

63. Mr Treverton-Jones criticised the provision by Mr Metcalf of a template statement to police officers in the context of the contribution proceedings. He considered that it was improper to provide the officers with a template which contained text as opposed to headings of topics to be covered. I asked him to comment on the general practice in the 1980s of solicitors acting for members of trade unions in proceedings based on employers' liability whereby the solicitor would obtain in writing informal instructions from the member, the solicitor then would draft a full witness statement based on all of the material available to the solicitor and send it to the member asking him or her to review the statement and the member thereafter would sign and return the statement with amendments or additions as appropriate. Mr Treverton-Jones did not consider that this course of events would be improper or open to criticism.

Discussion

Peter Metcalf

64. With all of those matters in mind, I turn to consider whether the prosecution have established a case to answer. I deal first with Count 2 since I consider that there is no doubt that the prosecution have failed to establish a prima facie case on that count. The criticism made of Mr Metcalf is not that he invited the relevant officers to review the evidence they gave at the Taylor Inquiry. That was not an act which had any tendency to pervert the course of public justice. The allegation is that the provision of a template statement containing text had that tendency. Yet the expert witness relied on by the prosecution, when provided with an example of a course of conduct incapable of any sensible distinction from the course adopted by Mr Metcalf, said that the example provided did not involve any improper conduct. I do not propose to engage in close analysis of what the relevant officers said at the Taylor Inquiry. The important parts of the transcript are set out at tab 15 of the Metcalf General Schedules. All that is necessary to

say is that there was material in the transcribed evidence which gave rise to a reasonable query on the part of Mr Metcalf.

65. Mr Metcalf provided a draft statement but at the same time indicated that he wished the officers to use their own words if, on review of their evidence, they wished to make a further statement. He also said that they should not make a further statement if they could not add to the evidence they gave at the Inquiry. If a witness has said something on one occasion and then decides that he wishes to amend or add to what he had to say previously, he is not thereby perverting the course of justice. At its height that is the outcome which would have resulted in this case.

66. I turn to the case against Mr Metcalf on Count 1. For the reasons already given, the Taylor Inquiry was not the course of public justice. Whatever the effect of his acts in relation to that process and whatever element of culpability there may have been on his part, it could not constitute the criminal offence with which he is charged. In the annex to this ruling I set out the extent to which Mr Metcalf could be considered culpable in any event. Those considerations do not arise in respect of the Taylor Inquiry.

67. The way the prosecution seek to put the case is to say that Mr Metcalf must have anticipated coronial, criminal and/or civil proceedings. He must also have appreciated that accounts provided to WMP for onward transmission to the Taylor Inquiry might be used in some way in those further proceedings. That approach requires proper analysis of how Mr Metcalf's acts had a tendency to pervert those proceedings.

68. The nature and purpose of an inquest in 1989 was limited. Sir Robert, who has considerable professional experience in attending inquests over many years, described the dynamic of the inquest at which those representing the bereaved would attempt to widen the ambit of the proceedings only to be met with the objection that the purpose of the inquest was not to apportion blame or fault. Even if Mr Metcalf's acts were aimed at masking failings of SYP, these would not have the tendency to pervert coronial proceedings.

69. Very little evidence has been adduced in relation to the inquests which in fact took place in 1990. The agreed facts reveal that the archive of the Coroner who conducted those inquests contained the accounts as provided to WMP of 21 of the officers on whom the prosecution now rely. 15 of those officers had made further statements in Criminal Justice Act format i.e. as taken by WMP after the Taylor Inquiry. Most of the statements related to the involvement of the officers with the bodies of the deceased. This is not surprising since it would be relevant to the issues to be considered by the Coroner under the 1988 Act. There is no evidence as to whether any of the police officers gave evidence and, if they did, about

what. Malcolm Ross's evidence was that CJA statements would be needed for any inquest. By that he meant that, for a statement to be put before the Coroner as part of the evidence, it had to be in that format. Sir Robert's evidence was that a witness could be called before the Coroner without the witness making a CJA statement but the witness would have to be sworn. The important point is that the evidence would be within a relatively narrow compass.

70. The prosecution argue that Mr Treverton-Jones's evidence about a duty of candour in relation to coronial proceedings is sufficient to require the jury to consider Count 1 by reference to such proceedings. It is not for me to reach a view about the duty of candour for which Mr Treverton-Jones contends in relation to a public inquiry. I am invited on behalf of Mr Metcalf to exclude this evidence in its entirety, an invitation which I reject. Whatever my view of absence of support for his view, the expert has put it forward from a position of significant expertise in public inquiries. I do consider that no reasonable jury could conclude that this duty is to be transferred to the context of coronial proceedings. The matters I set out at paragraph 60 are sufficient to allow me to conclude that, in reality, this part of Mr Treverton-Jones's evidence was not expert evidence.

71. Sir Peter when considering whether to dismiss the charges on which Mr Metcalf had been sent concluded that the accounts considered by Mr Metcalf could not have been referable to any civil proceedings since they were to be provided to WMP. WMP had no interest in or knowledge of any civil proceedings. I am not sure that I agree with that route for ignoring civil proceedings. It is arguable that it was within Mr Metcalf's contemplation that the accounts, having been provided to the Taylor Inquiry, would be in the public domain and open to use or consideration in the context of later civil proceedings. But, even if Sir Peter's analysis were not correct, the amendment of SYP officers' accounts could not have the tendency to pervert any civil proceedings. As conceded by the expert witness called by the prosecution, a solicitor acting for a client in civil proceedings is entitled to adduce only such evidence as will assist his case so long as any omission does not render misleading the evidence adduced. Assuming that Mr Metcalf could be said to have foreseen that the amended accounts in some way would be used in civil proceedings, those accounts could not have perverted those proceedings. No proper basis has been established to show that any omission from any account rendered misleading what remained.

72. As for criminal proceedings, the prosecution are correct in submitting that it is not necessary for them to show the precise nature of the proceedings

contemplated. Equally it is necessary to consider what the proceedings might have been given that the jury would have to find that Mr Metcalf's acts had a tendency to pervert those proceedings. In the annex to this ruling I deal in greater detail than is appropriate in the body of the ruling with what Mr Metcalf actually did. No criminal offence is concealed by any act of his. Did anything he did make a criminal investigation more difficult or might it have done so? The prosecution have not explained how that was or might have been the case. The prosecution's written response in relation to this issue simply rehearses the proposition that the belief of Sir Andrew Collins and Lord Justice Taylor would not be relevant to the jury's consideration of what was in Mr Metcalf's mind. I agree that it would not be determinative. However, what was in Mr Metcalf's mind is not the issue. The question is whether there is sufficient evidence to provide a prima facie case that what he did had a tendency to pervert a criminal investigation and thereby the course of justice.

73. The jury have evidence of what the Chief Constable of WMP, Geoffrey Dear, reported in 1990 to the Director of Public Prosecutions in respect of his force's investigation and the accounts provided by WMP. He described them as "very unsatisfactory for a criminal investigation". One reason he gave was that he appreciated that they had been subject to review and possible editing. It is relevant that WMP knew that the accounts of SYP officers had been subject to review. In a few cases, albeit by accident, WMP received both versions. Mr Metcalf did not advise that accounts should be amended and the originals destroyed. WMP (assuming they wanted it) had access to the full version of any officer's account. There is simply insufficient to allow any reasonable jury to conclude that Mr Metcalf's acts had a tendency to pervert the course of public justice in relation to any criminal proceedings.

74. It is apparent from the transcript of the proceedings before Sir John Goldring between 2014 and 2016 that the amendment and alteration of self-penned accounts has caused very considerable anxiety and distress amongst those most affected by the Hillsborough disaster. However, the entirely understandable reaction of the bereaved – set alongside the fact that a very senior SYP officer lied about a crucial matter in the immediate aftermath of the disaster – cannot affect my duty to consider whether the evidence at this stage is sufficient to leave to a jury in relation to a very serious criminal offence. For all the reasons given I conclude that it is not.

Donald Denton

75. In the course of oral submissions I asked the prosecution whether they sensibly could argue that Mr Denton might be convicted in the event that Mr Metcalf were acquitted on Count 1. Their response was that they could. They argued that he might have concluded in his own right that what was being done had a tendency to pervert the course of public justice and that he hid behind that legal advice. His complicity in amendment of accounts thereby would be separate from that of Mr Metcalf.

76. I am satisfied that this proposition is flawed. First, the basis upon which I have ruled that the case should be withdrawn from the jury means that Mr Denton could have no separate route to criminal liability. If the alterations to the accounts could not have had any tendency to pervert the course of public justice for the reasons I have given, those reasons would apply mutatis mutandis in the case of Mr Denton. Second, there is no evidence that Mr Denton ever saw an original account in order to compare it with the proposed amendments. The prosecution argue that some of the correspondence from Mr Metcalf gave some indication of the kind of amendment that was being suggested. Without seeing the original account no-one in Mr Denton's position could have any appreciation of the detail of what was being advised. It only would be with such an appreciation that Mr Denton could have known that any amendment had a tendency to pervert the course of justice. It might be said that he ought to have realised the possibility of something untoward. That is not sufficient to justify leaving serious criminal charges to the jury. Third, the indictment in Count 3 charges Mr Denton with ordering amendments. Mr Denton's role on the evidence was to act as a form of post box. He received advices from Mr Metcalf. He passed them on to Mr Foster or another member of his team. As the senior officer involved in the day to day process of amending accounts, he had a supervisory role of sorts. No reasonable jury could translate the evidence adduced into Mr Denton ordering amendments. Fourth, the prosecution have to establish a prima facie case that Mr Denton intended to pervert the course of justice. There is no evidence that he saw any original account or that he saw any of the questioned amended accounts before transmission to WMP. Thus, there is no evidence that he was aware from his own knowledge what was being advised or being done. In those circumstances, the fact that he was acting on the basis of advice from a solicitor acting for SYP is sufficient to tender untenable the proposition that he intended to pervert the course of public justice.

Alan Foster

77. Mr Foster is not in the same position as Mr Denton. He was personally involved in the amendment of a substantial number of accounts. In addition, he amended accounts which were not considered at all by Mr Metcalf. Theoretically he could be criminally liable irrespective of any finding in relation to Mr Metcalf.

78. The first point to be made in his case is that the requirement to demonstrate a tendency to pervert the course of public justice applies in the same way as it does to Mr Metcalf. The reasoning in relation to Mr Metcalf – which I shall not repeat – applies equally to him. Second, Mr Foster was not party to the various discussions between senior officers of SYP and the legal team. He was required to deal with the accounts of SYP officers for the purposes of the Taylor Inquiry. There is evidence that he believed that the accounts also were potentially relevant in relation to disciplinary proceedings. Neither concerned the course of public justice. There is no evidence that he was aware of any other purpose for which the accounts might be used save for a single remark allegedly made by Mr Foster to a SYP officer (Groome) about coronial proceedings. There is ample material on which to apply Section 125 of the 2003 Act i.e. to conclude that this evidence is so unconvincing that it should not be used to support the conviction of Mr Foster. If Mr Foster did not know that what he was doing had the potential to be used in some way in the course of public justice, he cannot have intended to pervert the course of public justice. However, this point is very much secondary to the primary conclusion i.e. that no amendment had a tendency to pervert the course of public justice.

Conclusion

79. It is apparent that everything that these defendants did between April and August 1989 was directed at the Taylor Inquiry. I conclude that it is equally apparent from the initial case summary that the initial focus of the prosecution case was interference with the process of the Taylor Inquiry. That is the submission made on behalf of Mr Foster. I see the force of it. As matters have developed, it has been necessary for the prosecution to switch its focus to other proceedings. The problem is that there is little or no evidence about those other proceedings and/or there is no basis upon which to say that anything done by any of these defendants had a tendency to pervert the course of public justice in relation to other proceedings. So it is that I have concluded that there is no case fit for the jury's consideration on any count on the indictment.

80. I repeat my observation about the anxiety and distress being felt by the families of those affected by the Hillsborough disaster. These proceedings have been very drawn-out following a lengthy trial process involving the match commander. I know the strength of feeling there was after his acquittal. I am aware that these proceedings also have been observed with interest. However, whatever the anxiety and distress, I have to determine whether there is evidence to support the particular criminal offence with which these defendants have been charged. In concluding that there is not, that is all I do.

Mr Justice William Davis

24 May 2021