

Dodging a technical knockout

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Charging the right defendant

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Charging the right defendant

- > Basic but crucial
- > Corporations and individuals
- > What if you make a mistake?
- > Sensible precautions for investigators

A recent example

- Is a store manager a “manager” for the purposes of the consent/connivance/neglect provisions?
 - > *any director, manager, secretary or other similar officer of the body corporate*
 - > *“to catch those responsible for putting proper procedures in place; it is not meant to strike at underlings” (R v Boal)*
 - > *“The word “manager” means a person who is managing the affairs of the company as a whole” (Registrar of Restrictive Trading Agreements v W.H. Smith)*

And another

- The “one-man band” corporation
 - Who sold the goods – the Director or the Corporation?
 - Who was being asked questions in interview?
 - Can (should) you amend?

Time limits

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Discovery

Mere discovery of facts — connotes no investigation, confirmation of facts, or assessment of whether they amount to an offence.

- all the facts material to found the relevant charge under the Act were disclosed to the appropriate officer. (*Brooks v Club Continental Ltd.* [1981] Tr L 126)
- the facts disclosed, objectively considered, would have led the prosecuting authority to have reasonable grounds to believe that the offence might have been committed by some person who had been identified to it. (*Tesco Stores Ltd. v Harrow LBC* [2003] EWHC 2919 (Admin))
- evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings. (s. 35A, Building Act 1984)

Evidential Sufficiency

Goes beyond discovery — requires consideration of evidence.

- ... the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge. (s. 31, Animal Welfare Act 2006)
- although the prosecutor in the case as a whole is the collective body (here, the County Council), it is the individual with responsibility for deciding whether a prosecution should go forward whose thoughts and beliefs are relevant. (Letherbarrow v Warks CC [2014] EWHC 4820 (Admin))
- The prosecuting authority is not entitled, by passing papers from hand to hand and failing to address the issue, to delay the running of time. (RSPCA v Johnson [2009] EWHC 2702 (Admin))

Primary Authority Cases

Regulatory Enforcement & Sanctions Act 2008.

- Section 28 and Schedule 4 cover references to primary authorities and BRDO
- Time will not run during any period during which an authority is prohibited from taking enforcement action under s. 28 & Schedule 4.

Disclosure

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The test for disclosure

*“The challenge is that the disclosure system itself is quite straightforward. The rules are quite straightforward. Essentially, you have to disclose to the defence **material that might either undermine the prosecution case or assist the defence case.**”*

- Kevin McGinty (HM Chief Inspector of the Crown Prosecution Service)
House of Commons Justice Select Committee July 2016

What is disclosure all about?

*“At the heart of every investigation is the obligation, in the [Criminal Procedure and Investigations Act 1996] and Code of Practice, **to pursue all reasonable lines of enquiry** whether these point towards or away from the suspect.”*

- CPS Disclosure Manual

The stages

Stage 1: Initial disclosure by the prosecution

Stage 2: Made by a defence statement. Mandatory in Crown Court cases and voluntary in magistrates' court cases.

Stage 3: Continuing duty of disclosure by the prosecution

R v R and “e-disclosure”

R v R and others [2015] EWCA Crim 1941. Sir Brian Leveson P:

To fulfil its duty under section 3 of the CPIA, the prosecution had to adopt a **considered and appropriately resourced approach** to giving initial disclosure which had to extend to and include the **overall disclosure strategy**, selection of **software tools**, identifying and isolating material that was subject to legal professional privilege and **proposing search terms to be applied**. The prosecution had to explain what it was doing and what it would not be doing at that stage, ideally in the form of a “**disclosure management document**”.