**IN THE CROWN COURT**

**AT LIVERPOOL**

Order No: T.20167064

The Queen Elizabeth II Law Courts

Derby Square
Liverpool, L2 1XA

Date of hearing: 6th September 2017

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**Before:**

HIS HONOUR JUDGE CUMMINGS, QC

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|  | **R E G I N A** |  |
|  | **- v -** |  |
|  | **ROBERT SMEDLEY****CHRISTOPHER JOHN JOYNSON** |  |

**MR J. DYER** and **MS L. WRIGHT** appeared on behalf of the **PROSECUTION**

**MS S. SWIFT** appeared on behalf of the defendant **SMEDLEY**

**MS F. HUSSAIN** appeared on behalf of the defendant **JOYNSON**

**PROCEEDINGS**

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JUDGE CUMMINGS: Mr Dyer..?

MR DYER: Could I update your Honour as to progress we have made yesterday afternoon and this morning.

JUDGE CUMMINGS: Yes.

MR DYER: I have looked at the witness schedule that I had prepared and the timing of witnesses that we originally had. It was a little tighter than your Honour’s deadline of 6th October – I think it was probably about 3rd October that we had arrived at for the end of the prosecution case and some of the days may be a little ambitious in terms of evidence – but more or less the time-table, I hope, is one we can potentially achieve, if I can put it that way.

JUDGE CUMMINGS: Yes.

MR DYER: As far as other matters are concerned, we have been considering documents for witnesses and I have given a list of certainly documents for witnesses for this week that I propose they have, particularly the witnesses in Leicester; it is important they have the documents to read before they actually go into the room.

JUDGE CUMMINGS: Yes.

MR DYER: My learned friends are considering that. I do not think there will be an issue with that but I think there are some further documents they would wish to add to it and so on. We will hopefully complete that process in relation to other witnesses as well. There has been some further disclosure to my learned friends which has been made today. It is a recent development in relation to HEFCE, who are the regulators of the University effectively, and certain investigations they are required to carry out in relation to alleged activities of some of the staff at the University, if I can put it that way without going into detail. The disclosure that I have made this morning is in the form of an email that was sent to the investigating officer and I know my learned friends want to reflect further on that. It may have a bearing on their approach to cross-examination of central witnesses in the case. I will be corrected if I am wrong but I am pretty sure that is right.

MR SWIFT: That is correct, your Honour.

JUDGE CUMMINGS: Is that because those witnesses are or said to be amongst the staff involved in the “alleged activities” or..?

MR SWIFT: Yes.

MR DYER: In general terms I suppose that is right.

JUDGE CUMMINGS: I mean from the defence point of view, whatever the Crown say about it.

MR SWIFT: Your Honour, yes.

JUDGE CUMMINGS: Thank you.

MR DYER: Yes – it is not limited to this funding fraud, if I can call it that. The position is this, I am told that HEFCE require a response from the University by a week on Friday in any event and so the University are obliged to carry out some form of investigation themselves into those allegations which do not have direct connection, of course, with the subject matter of this trial.

JUDGE CUMMINGS: So by 15th September they are expecting that, yes.

MR DYER: Yes, which is in fact before any of the relevant witnesses will have given evidence - that is I think clear from the time-table that we have at the moment – so I know my learned friends have had that to consider. The other matter we have been dealing with this morning is access to Mr Joynson’s Yahoo accounts. As far as the Forward Education Yahoo account is concerned, the defence have indicated they are not prepared to allow any access to that account. As far as the other account is concerned, that is the personal account – and this concerns the documents that are in the Christopher Joynson jury bundle - your Honour will recall the email and alleged attachment.

JUDGE CUMMINGS: So a version of the application form including matters which did not then appear on the hard copy that was signed?

MR DYER: That is right, yes. What has happened is that this morning after some discussion we have used a laptop and, in the presence of the officer in the case and Mr Joynson’s solicitor, Mr Joynson has allowed access to his account using his user name and password so that the officer could look at what is there. The officer has looked and taken some time to look at what is there in terms of the email and application and made some notes so that he can prepare a statement in relation to that. There are some apparent anomalies, if I can put it that way, in the appearance content of the account and there may be as a result some further limited evidence adduced by the Crown in due course in relation to that. I will not go into the detail unless your Honour wishes me to because I do not have the notes in front of me and I do not want to get it wrong.

JUDGE CUMMINGS: No, quite.

MR DYER: But we have gone through that process and it may result in some further expert evidence in relation to the Yahoo email.

JUDGE CUMMINGS: Put shortly, if you are able to say, is there a dispute or alternatively no dispute as to the sending of the email with the attachment?

MR DYER: At the moment there is a dispute because it appears that in the “sent” box there is an email without an attachment but it is a little more complicated than that and so we need to look further at that.

JUDGE CUMMINGS: I understand, thank you.

MR DYER: But it is not something that in my submission would hold up the trial if there is clarification in due course or further evidence. So those are the matters we have been dealing with this morning and we have made progress to that extent. We do still need to have some further discussion about – I will call them jury bundles, I know that they are not to be presented in that form to the jury but the documents that have been identified in those bundles by my learned friends that may go before the jury. In relation to that, I anticipate we may need some assistance from your Honour yet, perhaps this afternoon if your Honour is available.

JUDGE CUMMINGS: Absolutely; I am here all day.

MR DYER: I do not want to test your Honour’s patience.

JUDGE CUMMINGS: No, I am here all day. From my point of view it is a trial day like any other, we just do not have the jury, so within the normal sitting hours or indeed within reason beyond I am available.

MR DYER: Thank you, your Honour. I do not know if my learned friends have any other views as to how we should use our time but that is what I was proposing this afternoon if my learned friends agree.

MR SWIFT: I agree entirely, your Honour; put to good use.

JUDGE CUMMINGS: Thank you. May I just indicate and it is not necessarily a problem but just so you know, I do not have a copy of any bundle from your client.

MR SWIFT: I will hand one in now.

JUDGE CUMMINGS: Thank you. I may or may not need it but I do not have it yet. Could I ask this, and it is an entirely separate and anodyne matter, but if and when it comes to the reading of any statements and if there is any significant editing of any statement, could I if possible be forewarned?

MR DYER: Yes.

JUDGE CUMMINGS: It is not always easy to follow if there is significant editing.

MR DYER: That is right. Can I apologise in advance for the handwritten statements of a couple of the witnesses tomorrow – there are chunks, of course, that we are not relying on as your Honour is aware in relation to the reference and so on.

JUDGE CUMMINGS: Yes, that is fine, thank you very much. Anything else?

MR DYER: Not at this stage, your Honour.

JUDGE CUMMINGS: Very good. As I say, I am available generally but it sounds like you will not want to reconvene before this afternoon, so if I say not before 2 o’clock?

MR DYER: Yes.

JUDGE CUMMINGS: Thank you very much.

SHORT ADJOURNMENT

MR DYER: Could I thank your Honour for your Honour’s patience. We have been working on documents, and documents in particular for witnesses to see and contact with Leicester for tomorrow to make sure are ready. As far as that is concerned, there are extracts in the jury bundle, a few pages that have been put together for each of the two witnesses on a video link---

JUDGE CUMMINGS: From the bundle – which bundle?

MR DYER: From the prosecution jury bundle, just the relevant pages, and so it will be possible to cross-refer and the jury should know where we are. They will have the same page numbers on although they will not have the full bundle. There should not be a problem there.

JUDGE CUMMINGS: Thank you.

MR DYER: In addition, my learned friend Mr Swift has provided a few pages of documents – a pack for each of the witnesses – that he would wish to ask them about and potentially show some of those or give some of those to the jury. There are just one or two pages, in fact.

JUDGE CUMMINGS: Yes.

MR DYER: As I understand, my learned friend Ms Hussain needs a little more time. There is a bundle of documents, hard copy, that we have been provided with which relate generally to the Fosse project but certainly on a perusal of those (I have not had them very long) none of them are documents which could properly be put to the witnesses on the video link because they are correspondence with people from Edge Hill. There is no indication at all that either of these witnesses would have seen any of these communications and I am loathe to send through in electronic form and ask to be printed out a bundle of 70-odd pages of documents when I cannot see a single one of them that could be put to the witness. I understand that there is a lot of documentation and it may be that there is the odd document that may need to be presented to the witness but I am anxious to avoid what could be real problems if a further bundle is sent through. We sent the other one because time is passing and we want, before the court closes in Leicester, to have those documents there.

JUDGE CUMMINGS: Yes.

MR DYER: But I am anxious not to then send another bundle to witnesses who then do not know whether they are reading it or dipping into it and why they are reading other people’s correspondence. So I am really anxious that we can make a proper start tomorrow on the video link witnesses; that is my anxiety. That is the position we have reached. I understand my learned friend does have other documents in an electronic form which have been sent to us. Again, there are quite a few pages and I do not think they are paginated but I think we do need to have some fore knowledge, even if the witness does not see the document, and be precise as to which documents they are, particularly if there is no pagination. So my concern and the thing I would like to resolve now is what the witnesses are going to be shown.

JUDGE CUMMINGS: Yes, thank you. Ms Hussain..?

MS HUSSAIN: I can only achieve so much in advance of actually embarking upon cross-examination, so what I have endeavoured to do is to provide the Crown with the video link witnesses – the witness packs as I have described it. From those witness packs some of the documents may be referred to in cross-examination, some of them may not but we do not have the liberty, as we normally would with witnesses in person, where we can cope with any changes. What conceivably might need to be put to them needs to be at their side at their end. So I am afraid at this stage I cannot help any further. I have provided a witness pack and my suggestion is that that be transmitted over to the location where they will be and printed out so that we can refer to documents. It may well be that they are not aware of certain matters. Had they been aware of it, it might have provided me with a route through which to ask them further questions and present documents to them. This is why I say it will depend to a certain extent on the answers I receive. I am sorry the electronic bundle is not paginated; there is nothing I can do about that at this late stage. So far as the other bundle, the generic---

JUDGE CUMMINGS: I have not seen the bundle but if the bundle is not paginated, how is it going to be referred to? If you want a witness to look at a particular document how is the witness going to be taken to that document?

MS HUSSAIN: It will have to be identified, the document within it. It is not ideal but that is the format I have it in. For example, some of the documents are a job appraisal review; it is headed.

JUDGE CUMMINGS: As I say, I have not seen the documents but this sounds like, I am afraid, a recipe for confusion or at the very least time wasting while people riffle through piles of documents to get to an unpaginated document by description. What do you say to Mr Dyer’s contention that the documents, wholly or substantially, are not documents that can properly be put to the witnesses in question because they are not the witness’s documents?

MS HUSSAIN: In that regard those comments are aimed, I think, principally at a separate bundle that has been prepared which has been---

JUDGE CUMMINGS: Is that right?

MR DYER: Yes – sorry, I have confused your Honour. I have been handed a hard copy bundle which I have briefly riffled through and I have checked the nature of the correspondence. That is 71 pages, that is paginated and I can find documents, not a problem, but none of them are documents that can be put to the witnesses. In addition, there are two packs that have been emailed – these are electronic – they have not come through on my laptop but I am looking at my learned friend’s and they seem to be a different type of document. I have not had a chance to look at those yet but there is certainly an appraisal or something of that nature in there, so there are two separate things.

JUDGE CUMMINGS: All right. What, if anything, am I being asked to determine at this stage? Ms Hussain is right, is she not, in this respect, Mr Dyer, that however it has come about and whether it is a desirable state of affairs or not, if in principle there are documents that might be put to a witness then as a matter of practicality those documents need to be at the Leicester end.

MR DYER: I agree, yes.

JUDGE CUMMINGS: In terms of where the least inconvenience lies it is less inconvenient, is it not, to transmit a bundle of documentation, even if it turns out to be in any degree unnecessary, rather than have delay while we try and do that tomorrow if it turns out certain things need to be put?

MR DYER: Yes.

JUDGE CUMMINGS: First of all, the material needs to get to them – I am not saying it is your responsibility, I am not sure it is not the defences’, but she is right about that, is she not?

MR DYER: Yes. My anxiety is that we deal with things as smoothly as possible. I am fairly confident – fairly confident – that as far as this bundle is concerned they are not documents that these witnesses could possibly comment on because it is not their correspondence, the many emails, and so I would rather not send through all of that unless there is something specific that needs to be sent through.

JUDGE CUMMINGS: All right.

MR DYER: But the other documents, we paginate those---

JUDGE CUMMINGS: Let us stay with that for a moment – Ms Hussain, Mr Dyer is referring there to a body of documentation which he says cannot be put to the witnesses in question because it is not fair---

MS HUSSAIN: The two video link witnesses principally, I think.

MR DYER: I am concerned with the two, yes.

MS HUSSAIN: That might be right and I agree; if it is not communication that the witnesses are party to then that would be right. My difficulty is I am not in a position to indicate at this stage which of these I would contend are documents that could be put to them, and I am sorry about that but I am working through a good deal of material and that is simply not a task I am able to identify. The only reason why I really, I think, jointly for the defence to some extent just provided that bundle was out of an abundance of caution; just transmit them in case.

JUDGE CUMMINGS: How long have you had the material from which that bundle has been compiled?

MS HUSSAIN: In a format for me to be able to make sense of any points that derive from it, very shortly indeed. Not very long.

JUDGE CUMMINGS: I am not fully understanding why – I mean, this is the day before cross-examination of the witnesses in question and you are not clear whether certain documents can or cannot be put to certain witnesses.

MS HUSSAIN: No, what I want to understand – on the face of it I know the answer to the question, which is if this is communication that does not involve the witness directly then the default position always is it is not relevant to put to the witness. So I am clear from that perspective but what I want to ensure is that I am not missing any other point that might some way make it relevant. My feeling in relation to this is it is not going to need to be put but because the witnesses are being dealt with remotely it was out of an abundance of caution that I have handed this bundle over at this stage to say, “Well, transmit it; if it’s not needed then it won’t be referred to.” I appreciate it is not ideal.

JUDGE CUMMINGS: Do any of the documents in that bundle emanate from either of the TV link witnesses?

MS HUSSAIN: No, I do not believe they do. Some of them emanate from obviously the defendants, either one or the other, and they refer to the project – these are to do with the Fosse project.

JUDGE CUMMINGS: Yes, but we are not talking about questioning here, we are talking specifically about the putting of a document in front of a witness. Obviously a witness can be cross-examined about a document which is or is said to be a document of their own, a previous statement of some sort, but that is not being said about this.

MS HUSSAIN: No.

JUDGE CUMMINGS: I am wondering how then evidentially any of those documents could be put before any of the witnesses.

MS HUSSAIN: I agree entirely.

JUDGE CUMMINGS: If they do not need to be put before the witnesses – I mean, that is the practical question Mr Dyer is dealing with here, I think, whether the material needs to be at the Leicester end. Why would it be if it was not going to be put to the witnesses?

MS HUSSAIN: I am doing it out of an abundance of caution before I have absolutely been through each document, as I have indicated. That is my impression as well and that is my feeling.

JUDGE CUMMINGS: Forgive me, do you mean some of those documents may have been created by these witnesses?

MS HUSSAIN: No.

JUDGE CUMMINGS: On what other basis could a document be put to a witness?

MS HUSSAIN: I cannot see any clear way that it would, other than in those circumstances that we know of. Where they are party to the communication it would make it appropriate to place the document before them. What we were dealing with was a situation where we are running out of time today, the documents need to be transmitted, so it was really just for the sake of saying, well, this is related to the project, it is a question of whether it is considered to be onerous to simply scan these documents and get them over to the remote location where these witnesses are going to be.

JUDGE CUMMINGS: Mr Dyer..?

MR DYER: In relation to the hard copy documents, my tentative suggestion would be that they not be transmitted. If the worst comes to the worst and we have to transmit one of those emails it is not the end of the world. I say that, I have not had a chance to read in detail but I have particularly looked at who the correspondence concerns, who it is between. I cannot at the moment see any possibility of them going before the witness for them to comment on, rather than forming a basis for questions that are asked, and so certainly from my part, and it is obviously a matter for the court, from a practical point of view I would prefer at this stage simply not to send them through. If something arises which we have not foreseen we can send that particular email. We have the link available during the day, I imagine we can overcome it, but the chances of that happening seem to be very slim. I have had a brief look at the electronic pack for Sheila Marr. There are some documents again which are correspondence which the witnesses could not comment on. There are relevant documents such as an appraisal and a classroom observation and it would be my submission that the best way forward would be to extract those documents that could be put to the witness, paginate them and send them through probably now first thing in the morning. But hopefully then it will be a short document, I suspect. That is my suggestion.

MS HUSSAIN: Yes, I could do that and have it ready first thing at 9 o’clock or earlier – I can be here for 8.

JUDGE CUMMINGS: Very good, I will leave it between yourselves to make those arrangements. From the court’s point of view I simply want no delay with the jury and no loss of time thereafter. Is there anything else in relation to this? Mr Swift, no-one has involved you at this stage, do you wish to be involved? Is there anything to add?

MR SWIFT: There is nothing that I can add. I will assist and we will try and pare down the documents.

JUDGE CUMMINGS: Thank you very much.

MS HUSSAIN: Your Honour, just on time-tabling .. (Matters of time-table discussed).

A D J O U R N E D

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