**Hanna and Dodd: McNae's Essential Law for Journalists 25th edition**

**Additional material for chapter 35: The risks of being charged with bribery, misconduct, hacking or intercepting**

*The section number is from the book’s content.*

**35.3 The Bribery Act 2010**

**Hypothetical case study 1**

Myra, a journalist on a celebrity and showbiz gossip magazine has a contact at a major public relations outfit representing high-profile people to whom she regularly pays small sums in return for being told about clients’ social engagements and holiday plans, information she uses to get exclusive stories and photographs. Myra claims these payments, about which she has not told her editor, through her expenses.

Has Myra, the magazine or its publisher committed an offence?

Myra’s contact is only a junior at the PR firm - but owes the employer a duty of trust and good faith.

Myra has probably committed a section 1 offence of bribery by paying her with the aim of getting her to act improperly - breaching her duty of trust - by handing over confidential information,

Whether the magazine has a defence to any possible prosecution for a section 7 offence will depend on whether it has adequate procedures, such as policies telling journalists the circumstances in which payments to sources may or may not be justified.

Although the payments are relatively small, and the editor does not know of them, the fact that Myra reclaims them on expenses suggests that someone at the magazine should have known about or questioned them. Allowing Myra to reclaim payments to sources seemingly without any questions being asked suggests the magazine’s procedures are inadequate, or, even worse, that such practices are condoned or even actively encouraged, which may give rise to prosecution for a section 7 offence.

The Act contains no public interest defence - and in this case, there is no journalistic related public interest argument against prosecution.

**Hypothetical case study 2**

Artemus Jones, a reporter and columnist on a political magazine, has a source who is a middle-ranking civil servant in the Ministry of Defence. He pays this individual for information about the Secretary of State, who he believes is having an affair with a leading businesswoman, Daphne. Artemus discovers that Daphne’s company is pitching for a large government contract which the Secretary of State is overseeing. The magazine’s editor does not know that Artemus has paid for this information.

A financial advantage has been given, and Artemus arguably intends his source to act improperly. On the facts, the Secretary of State may not be doing anything improper.

But what if Artemus’s contact had overheard the Secretary of State discussing other companies' tenders with Daphne so as to help her firm gain an unfair advantage in the tender process? If the contact approached Artemus and expressed concern about abuse of power in government, and Artemus then paid for further details, could Artemus still be said to intend to induce improper conduct?

Does the desire to blow the whistle on wrongdoing in government override duties of trust, impartiality and good faith?  There is certainly an argument that it does, but until this idea is tested in the courts it is difficult to predict.

The contact’s conduct might be less excusable if the individual had access to a confidential whistleblowing line at work.

The whistleblowing would be a factor when the Crown Prosecution Service was considering whether to bring a prosecution.

Whether the magazine is guilty of an offence will depend on whether it has adequate procedures.

**Digital Economy Act 2017**

The Digital Economy Act 2017 allows Government departments and public authorities to disclose information on individuals and companies with each other and external organisations under conditions to protect personal data, where the purpose of the disclosure is specified in the Act. These include that the purpose is to reduce debt owed to the public sector, or to detect and investigate fraud against the public sector, or to enable research.

The Act makes disclosure of such information for other purposes a criminal offence, with some exceptions (such as when a court orders disclosure).

The News Media Association (NMA), the Media Lawyers Association and the National Union of Journalists (NUJ) expressed concern when the Act was in Bill stage that such law would leave investigative journalists vulnerable to being prosecuted if they published leaks of such information from ‘whistleblowers’ when using it to draw attention to wrongdoing or official ineptitude.

The NMA wrote to Culture, Media and Sport Minister Matthew Hancock warning that ‘the absence of defences for journalists means that journalists and media organisations could be prosecuted, even if they are plainly acting in the public interest or reasonably believe that they are doing so.’

The letter added that ‘the existing laws that govern the sharing of information, such as the Data Protection Act and the law on breach of confidence have defences for journalistic works and disclosures in the public interest. These protections recognise the importance of freedom of expression and the weight that must be given to its protection.’

Mr Hancock told the NMA and the NUJ that the Government ‘does not want to curtail freedom of speech or the legal rights of whistleblowers’, and was tabling the amendments ‘to put the matter beyond doubt.’

This amendment became law in the relevant sections of the Act, which state that disclosure of the relevant information is not an offence if ‘consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest’.