

Message

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Sent: 07/01/2024 19:53:28
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CC: Charlotte Tregunna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=userfc898c28]; Maria Cronin [GRO]
Subject: Ministerial consideration of POL's role in appeals [PP-DOCS.FID71323]

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Dear all

I wasn't sure who within POL currently is engaged on this issue but I assume you all are.

I have been listening with growing concern over the weekend to the reports that Alex Chalk is actively considering "stripping POL of its role" in appeals and/or using legislation to overturn every conviction. I assume he is considering the HCAB recommendations in their 14 December letter and attachment. My concern is not that the Government will implement any of the recommendations, but that it will do so on a false basis because it does not have all the relevant information and advice it needs to determine whether it will increase the number of successful appeals.

The most significant issue is that all the HCAB recommendations and the recent media and political response is based on the false assumption that there are 700 wrongful convictions, therefore there are hundreds of miscarriages of justice still out there whose route to justice is somehow being thwarted by POL and 'the system'. In reality, it is highly likely that the vast majority of people who have not yet appealed were, in fact, guilty as charged and were safely convicted. Unless this is made clear to the Government, it risks making incredibly important and expensive decisions on a completely false premise. I am sure that this point has been or is being made to whoever is briefing Alex Chalk, but I also know that points can be misunderstood or watered down by the time they reach a Minister, and this is one point that cannot be made strongly enough.

The second issue, which is not really for POL to make, but it should make it if no-one else will, is that based on its conduct of appeals so far the CPS is unlikely to take a more generous approach than POL and, if anything, will take a more restrictive view.

The third issue is that there are still many cases that need to go via the CCRC which, like the CPS, is completely independent and has already explained that it has rejected 31 applications based on clear confessions and/or other corroborating evidence of guilt. It could revisit those decisions but, unless there is further evidence or

legislation is used to either bypass the CCRC or change the test it applies, those decisions aren't going to change.

The fourth issue is the unspoken assumption that the CACD would overturn more convictions if only POL would let it, or it considered different arguments or evidence. There is no basis for thinking that the CACD will depart from *Hamilton* or that it will allow appeals if they would only come forward or if, contrary to expectations, the CPS concedes appeals which POL would not. The HCAB recommendations assume that only psychological barriers are preventing hundreds of PFAs from appealing and that if those PFAs came forward then, given the proper evidence, the CACD would allow the appeals. However, this 'trauma' theory only works if hundreds of innocent PFAs made false confessions. Even if that is true (which is very doubtful), because the burden is on the appellant, the CACD will expect them to give evidence on oath to that effect which it can then consider in reaching its decision. No-one has been prevented from doing that in any appeal to date. Several have withdrawn their appeals when it became clear that this is what they needed to do. The Government can't change the basic principles and procedures in the CACD: if a PFA was convicted based on a false confession and in fact suffered unexplained shortfalls then at some point they are going to need to explain that to a Court.

There are many other legal, procedural and practical points that the Government and CPS should consider before making any decisions, such as:

- Should the PCDE be completely re-done given the criticism that the *Hamilton* test is too narrow because the CACD did not see all the relevant material?
- If not, should POL still be responsible for searching the new repositories and/or conducting case-specific further enquiries in any given appeal?
- Should POL continue to liaise with NPPs on the current basis?

Please let us know if you need assistance from P&P in ensuring that the Government has a clear and comprehensive picture of all the relevant issues in its current decision-making process. If it does not, or they are not presented clearly, I am very concerned that the outcome of that decision-making process will not be in the interests of justice, PFAs or POL.

Kind regards

Nick

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