

Message

From: Jarnail Singh [IMCEAEX-
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on Jarnail Singh <IMCEAEX-
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Sent: 08/10/2014 16:13:06
To: Chris Aujard [GRO]
Subject: FW: Sir AH

Chris

Further to earlier email. Please see email below of Simon Clarke's more considered advice in permitting convicted applicants to the mediation scheme and support for permission for leave to appeal to the court of appeal.

Regards,

Jarnail

Jarnail Singh I Criminal Lawyer



From: Simon Clarke [GRO]
Sent: 08 October 2014 12:34
To: Jarnail Singh
Subject: Sir AH

Jarnail,

At your request we have again considered the decision of Sir Anthony Hooper to exercise his casting vote in M030. We are of the opinion that, were POL to mediate on the basis of the issue "..... whether the PO would agree to support an application for permission to appeal that conviction." a number of significant and potentially unresolvable difficulties arise:

1. There are 38 so-called criminal Applicants in the scheme. If one such Applicant were to be permitted to mediate this issue then others will seek a similar concession, no doubt spurred on by SS. Such a position would be both intolerable and untenable: for POL to mediate potential appeal assistance with all, or most of, the criminal Applicants (not an impossible scenario)

would necessitate both considerable expenditure and, if the mediation process were to be conducted according to the spirit of the scheme, potentially involve the making of concessions regarding the investigative and prosecutorial process and Horizon operability.

2. Were the outcome of a mediation conducted on this issue to result in POL lending support to an appeal, I foresee the following consequences:
 - i. POL would be required to answer to the Court of Appeal both for its earlier prosecutorial decisions and its new (mediated) stance. POL's support of an appeal for only one of 7 offences (as in this case) would take some explaining. Given that any appeal against a theft conviction must be predicated upon (alleged/perceived) Horizon failings, the Court would inevitably wish to consider allegations of Horizon error, reliability, *etc.* Such an enquiry could involve investigation into the wider Horizon context.
 - ii. The implications for POL, were such an appeal to be successful, would include both a further disclosure exercise of some considerable scope and further appeals, for a finding by the Court against Horizon would fundamentally (and adversely) alter POL's position on the topic.
 - iii. We have reviewed some 300 criminal convictions (and guilty pleas) back to 1st January 2010. It is likely that a substantial number of these convictions would be appealed off the back of a successful first appeal.
 - iv. The Court of Appeal sits in open hearing and the press are permitted to attend and report upon proceedings. Given media interest thus far it is inevitable that a (largely hostile) press would attend and report widely on the proceedings.
3. POL could, I suppose, refuse to mediate with this Applicant. Such a course however would likely engender stiff opposition from SS, who would no doubt publicise the fact. The repercussions of that publicity would be felt both within the scheme itself and by a wider audience.

We again reiterate our advice that POL should not engage in any mediation process with so-called criminal Applicants.

S

Simon Clarke

GRO

Tel: **GRO**

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Simon Clarke

GRO

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