POL00209747

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ADVICE
CRIMINAL APPLICANTS TO THE MEDIATION SCHEME CONVICTED OF FALSE ACCOUNTING

1. This Advice considers:
   i. The propriety of mediating claims to the Mediation Scheme ("the Scheme") made by a person who stands convicted of false accounting committed against POL assets or has been cautioned in respect of such an offence ("criminal Applicant" or "Applicant");

Criminal Offenders and Mediation

2. It remains our considered view that no Applicant guilty of a criminal offence committed against POL should be allowed into the Scheme or should be the subject of any "discussions" process, for the reasons set out below.

3. It is suggested that it would be practically possible to have a discussion with a criminal Applicant about a loss without needing to discuss the false accounting position, because false accounting is a method of hiding losses independent of any explanation as to how the losses occurred or who should be responsible for them. It is our view that this approach is fraught with danger.

4. There is an initial problem in defining what we mean by false accounting, for that term seems in the context of this process to have moved away from the criminal meaning[1]. In a large number of cases we have charged fraud and false accounting interchangeably, the indictment depending very much upon counsel's approach to the facts of each case[2]. If we permit entry into the mediation scheme to those criminal

[1] Dishonestly making a false, misleading or deceptive entry in an accounting record.
[2] John Dickson M073 refers to himself as being charged with false accounting, which on the facts he could have been, but was actually charged under section 2 of The Fraud Act 2006.

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Applicants convicted of fraud then we shall have to separate out those who were charged with fraud as an alternative to false accounting, from those who were charged with fraud as an alternative to theft. An example of this dilemma may be found in cases involving Post Office Card Accounts: here cases where the defendant entered a customer's PIN number twice were charged as fraud, notwithstanding that they had stolen money, he rationale behind this approach being that a charge of fraud does not require proof that the suspect physically removed the corresponding amount.

5. All of this means that one of the fundamental difficulties of the proposed a "discussions" with criminal Applicants is that there are no "typical" false accounting cases. Convictions range from those cases where it was a virtual certainty that the defendant stole the money and falsely accounted to hide the fact[3], to those cases where the reason for the loss of the money could not be ascertained, the criminality being that the defendant had tried to evade their contractual liability for the shortfall.

6. Further difficulties emerge. Identifying the basis of the Judge's sentencing decision is often difficult: in some cases there is good evidence as to where the lost money went; in others we did not have such evidence. In some cases the defendant was sentenced on an agreed basis; in others the Judge announced the basis upon which he was sentencing; and in yet others the Judge conducted a "Newton Hearing"[4]. It is thus often impossible to tell upon what basis the Judge sentenced: indications such as the imposition of a particularly lenient sentence do not assist for we are not privy to the mitigation advanced on behalf of a defendant.[5]

7. In many of the latter cases the main cause of being unable to ascertain the reason for the loss was that the defendant had hidden it through their false accounting. It is somewhat ironic that those who were better at false accounting are now in a more favourable position than those who did not take such care. There are also a number of

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[3] But for whatever reason, those prosecuting took a pragmatic view to accept a plea to false accounting, perhaps because of the absence of evidence pointing to the physical taking of monies.
[4] A process designed to identify whether the defendant was covering up a loss that he/she had deliberately created rather than covering up an unexplained (HOL?) loss.
[5] A defendant may, for example, escape an immediate custodial term through ill health, or for other compelling personal mitigation.

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cases in which it was not the applicant who committed the false accounting but rather an employee or relative did so.[6]

8. The reality unfortunately is this: the whole point of any false accounting exercise in to conceal a loss from POL, howsoever caused. It is impossible to divorce the issue of the loss from the issue of false accounting. The applicants are almost unanimously saying that the losses were either unexplained, or were generated by Horizon. In most cases they are saying that they were blameless in incurring the original loss and only entered false figures into the system because of the economic duress imposed upon them by POL's 'draconian' contract.

9. It is inevitable that criminal Applicants with false accounting convictions will say that the losses they covered up were generated without any culpability attaching to them: they should not have been prosecuted and convicted and they should not have had lost their homes, businesses and in many cases their liberty. In each case the court was referred to the amount of the loss and took that factor into account when passing sentence. The loss is also important in any ancillary proceedings, particularly where Confiscation Orders were sought under the Proceeds of Crime Act 2002.

10. It is in our view vitally important to ask the question why the applicant seeks to enter the mediation process or any "discussions" process, for the answer in many respects amounts to the answer to the conundrum posed by the issue considered in this document. In most cases the remedy the criminal applicant seeks is an acknowledgement from POL that they did not steal and did not dishonestly hide losses (howsoever caused). They seek this concession in order to provide a strong basis upon which they can then seek leave to appeal against their conviction to the Court of Appeal thus restoring their good name, recovering their assets[7] and obtaining compensation. Importantly, criminal Applicants will not be interested in any

[6] Gillian Blakey M015. The applicant's husband admitted false accounting on the day of the audit and was prosecuted for theft and false accounting; the Crown accepted a plea to false accounting. In this case the applicant was probably in a better position to ferret out the truth of the position as she was unencumbered by PACE considerations. Her position is, however, one of blind faith in her husband not being a thief despite the fact that he lied to her for months over the false accounting.

[7] No doubt with interest.

"discussion" limited to identifying how a loss might have arisen, for this will not address the issues they consider important and indeed some have stated as much.

11. Thus the inherent danger in accepting criminal Applicants into the mediation scheme, or in entering into "discussions" with them, is that any concession made therein will be seized upon as the basis of an appeal. This would generate considerable repercussions outside of the mediation scheme, particularly were an appeal be successful: one such repercussion relates to issues of the disclosure of concessions to those outside the scheme.

12. In most of the cases the records of the legal process are not complete and in some cases virtually non existent.[8] The "discussions" would have to rely upon the recollections of the applicants, some of whom have imperfect recollections[9] and others who are downright dishonest: POL would have some considerable difficulty in rebutting what a criminal applicant might say in any "discussion."

13. In other cases any "discussion" would be unmerited, the defendant having admitted causing the loss[10] or being in a better position than POL to know how the loss had occurred.

14. It is our view that any attempt to divorce the cause of the loss from the fact of any false accounting would be a futile exercise, without merit, fraught with danger and probably impossible. In most cases the available material is simply insufficient to establish the cause of the loss[11]. This lack of evidence was, in most cases, down to the fact that the criminal applicant had concealed losses, either to the point that a realistic reconciliation was impossible. In other cases the false accounting was so extensive that a reconstruction of a reliable picture would be impossible. To try to embark upon such

[8] Carl Page M118 Applicant had two trials, prosecution file destroyed and Court tapes destroyed with no transcripts available. The Applicant is contending that between his trial and retrial the Crown entirely changed the basis upon which he was prosecuted.

[9] Graham Howard states that the Judge in sentencing "commented that he felt this was an injustice." The transcript of sentencing remarks reads, "You and I will understand why the Post Office had to take the action against you, they must do that, but on the other hand they have done so also, I think, with a degree of sensitivity and understanding."

[10] David Hedges M068 wrote an article admitting "borrowing" POL money.

[11] Which may be why the applicant was have charged with false accounting

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a reconstruction exercise years later, on limited documentary evidence and reliance on dishonest or imperfect recollection is absurd.

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