

CONFIDENTIAL

M 30

Exercise of casting vote on whether case suitable for mediation

1. PO has voted against mediation. JFSA has voted for mediation, but has unfortunately declined to assist me in the exercise of determining how to cast my deciding vote.
2. The applicant pleaded guilty to theft. Apart from her plea there was, as I understand it, no other admission of guilt. The applicant explains that she only pleaded guilty because of the likely consequences of a much higher sentence should she be found guilty. It is not unknown for innocent persons to plead guilty for these reasons.
3. There seems to be no issue about the correctness of the false accounting convictions.
4. The applicant also states that she was unable to obtain the help of an expert witness because of lack of funds.
5. Apart from the plea of guilty, there is little in the papers to suggest that the applicant was guilty of theft and there are indications to the contrary, see e.g. the passage in the PO Report headed “Lack of Support”.
6. The applicant states that at the time of trial the prosecution disclosed that only a handful of calls had been made to the helpline. In fact 256 calls were made.
7. The only issue which in my view is suitable for mediation whilst the conviction for theft has not been set aside, is whether the PO would agree to support an application for permission to appeal that conviction (or, if appropriate, an application to the Criminal Cases Review Commission to investigate the matter).
8. An application for permission to appeal the conviction for theft could be successful if the Court of Appeal Criminal Division decided that there was a realistic prospect of showing that the conviction is unsafe, for example, on evidentiary grounds or on the grounds of material non-disclosure.
9. The test that I apply in this case is:  
“On the assumption that both parties will approach mediation in a genuine attempt to reconcile their differences, is it reasonably likely that mediation will lead to an agreed resolution of the issues.”
10. Applying that test, I cast my vote in favour of mediation on the issue identified in paragraph 7.
11. The parties can of course agree to further issues being considered during the mediation. In the absence of such an agreement and if neither party declines to mediate, the only issue for mediation will be the issue identified in paragraph 7.
12. Subject to the views of the members of the Working Group (by email please), I propose to send a letter to the applicant and to the PO which will reproduce paragraphs 1-11 of my decision.

Sir Anthony Hooper