

Herron, Stephen

From: Herron, Stephen
Sent: 17 January 2014 13:03
To: Rea, John
Cc: Burnside, Stephen; Burns, Jenny; Kyle, Ann; Mills, Danielle; McAuley, Nuala
Subject: RE: 679918- Margaret Ruth Johnston

Security Label: UNCLASSIFIED

John

I had a meeting with Ernie Waterworth in May 2013. The background to cases investigated by the Post Office was that they would be submitted to PPS by police and prosecuted by the relevant Region- usually as a theft or fraud. Mr Waterworth met with me to explain that Post Office wanted to cut out using PSNI as basically a postbox, and submit files directly to PPS. He has been retained by Post Office Limited to in effect quality assure files investigated before they are submitted to PPS. I had explained to him that this was possible and that cases could be sent directly to PPS in hard copy format. This would in effect add Post Office Limited to the list of Departments we prosecute for. I explained to Mr Waterworth that we would have to charge for cases as we were only funded for PSNI work. There has been no SLA drawn up or entered into.

Mr Waterworth submitted a file over the summer which I believe you are aware of John as there was some query as to whom the correct complainant should be. I note that the case in question here is one of the cases previously submitted via PSNI which Caroline Hamilton directed on.

In general the Departmental SLAs are not deemed to cover confiscation. When Ann was in HCI this query arose as regards DSD cases. We seek to recover costs from DSD as per the SLA-

In addition the actual outlay in respect of the conduct of SSA cases in the courts will be recharged to the SSA. This includes the fees paid to external counsel in the prosecution of SSA cases. These will be negotiated by the Assistant Director of Fraud & Departmental on the basis of fair and reasonable remuneration for work necessarily performed. This will apply in respect of fees received from 1st

April 2010.

Initially we were trying to charge DSD for any separate fee submitted by Counsel for confiscation proceedings. Lorraine Walls of DSD challenged this through Ann. Ann and I looked at the SLA and considered that we could not seek to recoup from DSD any special fee sought by Counsel for confiscation. However in practical terms Counsel mostly submitted a composite fee request for trial and confiscation and where there was no separate amount claimed for confiscation DSD were invoiced for the total amount.

If there is to be a future SLA with Post Office and indeed all other Departments the issue of confiscation fees would need to be addressed as per Jenny's suggestion, and I understand that separate draft SLAs re Restraint and Confiscation have already been drawn up by Ann.

I would suggest though that as we will have to draw up new SLAs with Departments anyway, as we are moving to a full cost recovery basis, that we should have just one SLA which includes a section on restraint and confiscation.

Regards

Stephen

From: Rea, John
Sent: 10 January 2014 14:41
To: Herron, Stephen
Subject: FW: 679918- Margaret Ruth Johnston

Hi Stephen

Does this ring any bells?

John

From: Burnside, Stephen
Sent: 10 January 2014 13:03
To: Rea, John
Subject: FW: 679918- Margaret Ruth Johnston

John

Please see the email below from Jenny Burns - it relates to a Confiscation case involving the Post Office. I have highlighted the relevant sentence in red. As you see there appears to be an agreement between F&D Section and the Post Office. I would be grateful if you could email me a copy of the agreement as it may assist our handling of the Confiscation process.

Thanks

Could I also add - on a side note - my thanks for your help in doing the Dip Sampling during my time in Lisburn - it was appreciated.

Stephen

-----Original Message-----

From: Burns, Jenny
Sent: 09 January 2014 15:07
To: Burnside, Stephen
Subject: 679918- Margaret Ruth Johnston

Stephen,

I wanted to bring this case to your attention. Ernie Waterworth from McCartan Turkington Breen Solicitors acts on behalf of the Post Office as their Northern Ireland legal representative. He contacted me before Christmas to enquire about the procedure in relation to the above joint Post Office/PSNI prosecution which had been postponed at court for a confiscation hearing. This is Joe Murphy's case however Simon Jenkins dealt with the case at plea and sentence in Craigavon Crown Court in November 2013.

Joe advises that Post Office witnesses in particular Suzanne Winters made it clear from an early stage they would be seeking a confiscation order, although no referral was made to HCI Section. Joe made a verbal application for a postponement order at arraignment. At plea and sentence Judge Loughran adjourned the case to 24.01.14 for a confiscation hearing. I understand from Mr Waterworth there was some wrangling between PSNI/Post Office about whose responsibility it was to appoint a FI. PSNI refused to do so the Post Office have now arranged for an English FI to get accredited in NI and he will take on the case. This has just been confirmed by the Post Office to Mr Waterworth the past day or two.

I have explained to all parties that all referrals for confiscation must come through this Section as we take the decision as to whether to exercise the prosecutor's discretion to ask the court to hold a confiscation hearing. It is not sufficient that the victim requests an Order (this case is complicated by the fact the victim is also the investigator). Mr Waterworth advises an agreement was made with Stephen Herron when he was AD for Fraud & Departmental about the procedure to be followed in joint Post Office/PSNI prosecutions. I have no information about this agreement and as far as I know this is the first case in which confiscation is sought.

On the information available to me at this stage it would seem that this is an appropriate case for confiscation. I believe the defendant had repaid £50,000 of £120,000 stolen funds and is planning to sell the Post Office premises to repay the balance. Joe advises a compensation order was discussed at an early stage, however the defendant did not sell the premises and has in fact just lost her appeal to the CA, so is unlikely at this stage to sell the premises voluntarily.

I advised Mr Waterworth there is a Service Level Agreement in place with other investigatory bodies in respect of financial investigations. As confiscation proceedings have already been commenced in this case I suggested his FI follows the same procedure he would in English cases and substitute the legislation for the NI equivalents, and I will have to look at any documents before they are served on court/defence. The correct procedures have not been followed to date, however this does seem to be a case for confiscation. Perhaps we can meet to discuss the way forward? We may also need to see the agreement between Stephen Herron/Post Office, as there may be implications as to who is responsible for counsel's fees etc.

Many thanks

Jenny

Jenny Burns tel: [REDACTED] GRO
Senior Public Prosecutor
High Court & International