

FILE NOTE

FILE NO:

DATED: 24 May 2005

SUBJECT: MOTORMAN

PJT attending Southampton Magistrates' Court – Tuesday 24 May 2005.

PJT arrived at Court at 11.30 a.m., somewhat later than had been anticipated due to a problem with the hydraulics on the aircraft he had been booked on to go to Southampton to arrive at 8 a.m. Prior to PJT's arrival at Court the Court had been appraised of the situation by Janet Witkowski and were aware of his late arrival.

Upon arrival at Court PJT met with Mr Fishwick who was for the purposes of that Hearing representing Lyle, Dewse, Whittamore, and Jones. Mr Fishwick indicated that Mr Upton had attended at Court but due to (and this was not intended as a criticism of PJT) PJT's delayed arrival, Mr Upton had had to leave to go to a different Court. Mr Peach from Peach & Gray Solicitors was acting as agent on behalf of Saunders & Co. for Mr Gunning.

PJT explained the position with regard to [] to both Mr Peach and Mr Fishwick, and explained that he would be withdrawing the summonses against [] Mr Fishwick took the view that as Mr Maskell is a co-conspirator in the offences relating to Mr Dewse it did not affect the validity of the other summonses as [] would simply continue on as a named co-conspirator, and the summonses were specific in their preparation to include named participants and others. PJT agreed with Mr Fishwick's view in that regard.

Of greater importance to Mr Fishwick was the fact that Mr Dewse was having problems in relation to the date we had been informed that the matter would be sent to the Crown Court. Mr Dewse has his children next week for the half term holiday which is something that he does not often have them for and as such the date that we were given by the Court would be unsuitable. In addition, Mr Gunning was booked to go on a foreign holiday, and in this regard PJT stated that from his perspective his Counsel was unavailable and that in the ordinary course of events Counsel's availability or lack of is never considered a good enough reason for moving things, however, in this instance it is coupled with the problems faced by the defendants. As a result of this all of the parties at Court were agreeable to naming the 10th of June as a suitable date for a Preliminary Hearing to take place. As such it was felt appropriate to write to the Crown Court as soon as the matter has been sent with this in mind.

Lastly, Mr Fishwick stated that he would be renewing his application for wasted costs. Mr Fishwick indicated that he did not anticipate that he would get very far with his application but those were his instructions.

Prior to Court sitting the participants had the opportunity of speaking to the Court Clerk and taking her through the procedures. The Court Clerk took the view that in her eyes there were no grounds for a wasted costs order to be made and she couldn't understand why the Bench had even entertained it on the last occasion.

Court sat at 12.30 p.m.

PJT apologised for his late arrival, only to be informed by the Bench that the Court had not been troubled by his late arrival as they had had a very busy morning, and that in any event it was unlikely that this case would have proceeded before the time that it actually did start due to the fact that they had been dealing with all of the matters that they had that had defendants in custody as they felt that they took priority.

PJT then withdrew the summons against [redacted] explaining to the Court the length that had been gone to by the Investigating Officers in relation to this case together with the fact that enquiries had also been made of the Benefits Agency. PJT explained the fact that the business premises were empty and that [redacted] has moved from his domestic property leaving no forwarding address and that the new owner had obliged with the details of the estate agents, but due to them having had a change of ownership in the last year they no longer had records either.

The defendants were identified and the allegations put to the defendants. Conspiracies 3 and 4 were put to Mr Dewse, Conspiracies 2 and 4 were put to Mr Gunning, Conspiracy 1 was put to Mr Jones, Conspiracies 3 and 4 were put to Mr Lyle, and Conspiracies 1, 2 and 3 were put to Mr Whittamore.

The Magistrates then sent the matter to Southampton Crown Court with a Preliminary Hearing date of the 1st June 2005, at 9.30 a.m. In the meantime the defendants were granted unconditional bail.

Mr Fishwick then made an application for the Representation Orders to be extended to cover the Crown Court proceedings. The Bench granted that application.

Mr Fishwick then renewed his application for wasted costs. Mr Fishwick stated that at the last occasion The Crown had been negligent in that they had only come to Court simply with the summons and no advance disclosure, and the Court had adjourned the matter with a strong recommendation that the Crown serve advance disclosure. Mr Fishwick stated that subsequent to that Hearing a detailed case summary had been served and that that case summary must either have been in existence at the date of the last Hearing or alternatively somebody had worked very hard to prepare it following on from the last Hearing. However, he stated that there was no indication given as to the nature of the allegations or as to the overlap with the ongoing proceedings that Mr Dewse faces. He stated that Mr Dewse knew nothing of these ongoing proceedings.

In addition, Mr Fishwick erroneously indicated that at the last Hearing PJT had stated that there had been no reply to summons received from Mr Jones.

PJT responded to the application in line with the draft notes made and attached hereto.

The Clerk then explained the position to the Bench stating that in this instance while there are three grounds on where a wasted costs order can be applied for, in this instance it is negligence that is alleged.

The Bench retired at 12.50 p.m.

The Court sat at 12.56 p.m.

The Bench stated that they had considered the wasted costs application and in their view they feel that the prosecution met their requirements. In addition, they had found that there had been no unreasonable act or omission by the prosecution up to today's Hearing.

Following on from that Mr Fishwick then raised the issue of the reporting restrictions that had been put in place at the last Hearing. An Order had been made covering all defendants, however, Mr Jones was not there at the last hearing, and as such he asked for the Order to be extended to cover Mr Jones today. The Bench then ordered that the reporting restrictions cover all defendants in this case until further order.

The Court rose at 12.57 p.m.

PJT/JT