



TELEPHONE NOTE

Date: 14 August 2013

Subject: POST/3/1 – General

Phone call with Martin Smith from Cartwright King.

Martin explained that they have a conference call every Wednesday morning with the Post Office Legal Department and several issues have been raised at these calls which have changed things somewhat.

Martin indicated that the issue of Crown Office had been discussed and the request for Robert Dailly to provide a Statement and everyone was agreed that it would not be appropriate for Robert to provide such a Statement and that if there was further pushback on that LJL should escalate the matter higher up.

LJL indicated that she did not think that Crown Office would push this any further but that she did agree that they needed some sort of expert guidance as to which cases were affected and what issues they should be concerned with.

Martin mentioned Susan Crighton, who is head of law at the Post Office. She has now agreed to stop issuing summonses in relation to Post Office cases because of the mess that they are in.

At the Wednesday calls there have been several other potential issues discussed which could be discloseable. Martin used one example of an individual who had been sabotaging bank machines and then going to fix them and stealing money from them. This could affect Post Offices. They are Bank of Ireland machines.

Martin explained that the lines of communication have not been very effective within the Post Office and that even Legal were not aware of the Helen Rose Report initially. They were only aware of the Second Sight Report. There now ought to be a central hub for information on the suggestion of Simon Clark.

These Wednesday morning conference calls have raised several issues and the Post Office is saying that these issues are genuine but they are not sure. Even in cases where people to admit to things and they could be convicted of false accounting there may be disputes as to the amount given the problems that may exist with the software. Even if they admit to something they can change their mind at court. Martin's concern is whether or not they have disclosed enough information. They are not really concerned about guilt or innocence but they need to satisfied they have disclosed enough information.

Martin also explained that the Post Office instructed Brian Altman Q.C. to oversee the work that was being done and his interim review prior to going on holiday was that he queried whether or not their remit of the review was wide enough.

Cartwright King have responded indicating that they do not think it is wide enough and they are pretty much in agreement with his views. They are concerned that cases are progressing without the proper disclosure being made because of a gap in the information that they have and that the Post Office has.

Basically Martin explained when Auditors go into a Post Office and find a deficit they assume that theft has occurred and not that there are computer issues.

Martin indicated that he did not think it was sensible to pool every case and that this would not be in the interests of the Post Office. In England the Judge would be involved in any decisions to pool a case.

Martin and LJl had a discussion about the difference in terms of the disclosure obligation in England and in Scotland. LJl explaining that potentially in Scotland an accused can remain silent until he gets to Court and it is only then that the Defence is revealed. Defences are not really used properly except perhaps in the High Court.

Brian Altman Q.C. is dealing with the review cases which include pending cases, live cases and old cases. However, the crucial issue is going to be the expert evidence which Cartwright King are advising the Post Office to obtain. Basically they have advised that the Post Office should obtain an independent expert (ie not from Fujitsu) who could either confirm or deny the problems that are being suggested with the Horizon system. This is in addition to the Second Sight Report and the Hazel Rose Report. This would then inform the Review properly because at this stage any review carried out would probably have to be re-visited. That may require to happen anyway if new issues are raised in the future. However, this cannot be avoided.

Martin explained that they were hoping to meet with the Q.C. during the week commencing 27th of August and that the likely outcome would be that the Post Office would agree to obtain an expert report because the Post Office/ Cartwright King cannot properly comply with its disclosure obligation without that expertise.

LJl indicating that she thought that the expert report would be relevant in Scotland, not the advice of the Q.C. In Scotland it would be up to the Crown as to whether or not they disclosed the evidence but they would require some sort of expert in-put into that. The expert will be looking at the system, not individual cases, so that will require to be done once the expert report is obtained.

In relation to live cases Martin would be concerned if the Crown decided just to withdraw all live cases and LJl shared his concerns.

Discussing the way ahead and LJl agreed that she should speak to Jarnail from the Post Office Legal about these issues to relieve the burden from Martin Smith and she would keep Martin up-dated as to what the approach was up here.

LJl

Note prepared – 2 minutes