

From: Rodric Williams [GRO]
Sent: Tue 11/02/2014 3:09:29 PM (UTC)
To: Chris Aujard [GRO]
Cc: David Oliver [GRO]; Belinda Crowe [GRO]
Subject: Conversation with Brian Altman QC re: Prosecutions

Chris – here's a summary of my discussion with Brian earlier today:

A. Purpose of Criminal Prosecutions

- Prosecutions must satisfy both stages of the "Full Code Test" set out in the Code for Crown Prosecutors (i.e. evidential and public interest);
- Debt recovery is not a factor in this Test, but can be a "peripheral spin off";
- A prosecution brought for purely commercial reasons risks being categorised as having been brought in bad faith or with improper motive;
- Board minutes/discussions about pursuing a prosecutions policy for commercial aims may need to be disclosed if the application of that policy was ever called into account. This presents a risk of reputational damage.

Key Message: It must be stressed that the ARC's decisions regarding prosecutions must not be driven by purely commercial objectives (e.g. loss recovery).

B. Jumping from "A" (status quo) to "C" (all CPS)

- A change of policy is not an admission that past practices were wrong;
- That said, it would still be open to someone (e.g. a "conspiracy theorist") to say that this did drive the change, referring to the temporal connection between the change in policy and the challenges to past prosecutions;
- This could lead to enquiries about the reasons for the change, e.g. requests for disclosure or questions in Parliament;
- It is far from certain that the CPS would take on any of our cases given the budgetary pressure it is under;
- We should start discussions at a high level within the CPS if we want it to take this on (i.e. don't just announce that the CPS is going to prosecute criminal conduct in our network without raising it with the CPS first!);
- We should not lightly give up (or cede to another) our expertise in identifying and (where appropriate) prosecuting criminal conduct in our network.

Key Messages: Jumping from "A" to "C" risks sending the wrong message to the network about how we view criminal conduct (both past and present), and losing our expertise in monitoring our network, without any certainty that prosecutions would be picked up by the CPS. However, a change in policy (however dramatic) does not present a pure legal risk of challenge to past convictions.

Please let me know if this needs expansion or you need anything further from Brian. He is available on his mobile –

[GRO]

Thanks, Rodric

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