

Message

From: Hocking, Stephen [GRO]
on behalf of Hocking, Stephen [GRO]
Sent: 13/06/2014 10:49:09
To: Rodric Williams [GRO]
CC: Chris Aujard [GRO] Belinda Crowe [GRO] Donnelly, Aimee [GRO]
Subject: RE: Strictly Private & Confidential - Subject to Legal Privilege

Dear Chris/all

Further to our telecom this morning, as promised I have jotted down my thoughts below against each of the possible action points. Overall and subject to those thoughts I feel the risk of a successful JR is very low.

- *Making it clear that Post Office will deal with criminal cases last (they take longer because of the volume of documentation and the legal clearance is more complicated and dealing with them in the bulk of other investigations slows down progress on other cases) and that we would only mediate in these cases in exceptional circumstances, believing that the correct next step for any of these applicants would be the Criminal Courts.*

I think it is reasonable and defensible to state that considering a complaint and especially mediating is very difficult is not impossible while a (potential) application to the criminal courts is pending. What is POL supposed to make of the conviction in any complaint proceeding? It is and may remain a good conviction: are we supposed to ignore it or guess the outcome of any application? It does need to be resolved before a complaint can sensibly be engaged with. I would like us also to adopt a general principle of trying to deal with the "quicker" cases first. This is a reasonable approach as it closes as many files as possible as quickly as possible, and would also support putting the criminal cases to the back.

The policy must be communicated in such a way that we are not suggesting we will not look at these cases for fear of reopening a criminal case. Obviously, if we have evidence that might suggest a conviction was unsafe, we would share it at once. The point we have to get across is that having shared it, the next step ought to be to resolve the criminal position which we cannot do

- *Moving Second Sight to a fixed fee structure with a clear work-plan (potentially with incentives to increase the speed of work) and regular quality and delivery review meetings – potentially saving several hundred thousand pounds depending on the fee level agreed.*

Fine, assuming the fees are credible (I saw £3.4k per file which seemed fine to me). Unless the new arrangements are in effect a sabotage of the ToR Second Sight's commercial terms are not a PL issue.

- *For cases which date back to pre-2007, for which records should have been destroyed under Post Office's data retention policies (as is best practice), carrying out a review of any available data to see if it supports a full investigation being taken forward. Where insufficient evidence still exists, no further work would be undertaken.*

We can start from a presumption of regularity, ie that in the absence of evidence that Horizon is inherently flawed, we will need to see evidence of an issue in a specific case before there is any possibility at all of any sort of settlement being offered. If we do not have the relevant records, then unless the SMPR can produce them (and (s)he needs to be asked) we can say there is no possibility of progress. However, we need to be careful to maintain a line between no/insufficient records to make any progress, and having looked at the records and decided the evidence they contain is not convincing/weighty enough for the SMPR to "win". The first is fine, the second short circuits the scheme. Visually, it's the difference between "have we got a box of records" and "what's in the box"

- *Disseminating the Linklaters advice, making clear that Post Office considers itself to have very limited liability and almost no liability in respect of consequential loss. [nb. In practice this will involve disseminating a statement of our legal position informed by advice which will remain privileged.]*

I don't see any PL issue here. Even if your advice was wrong, which I am sure it is not, JR wouldn't seem to be the right process to follow. (Either it should be a test case under part 7 or, perhaps, seeking a declaration under art 8, but the point is the legal issue needing resolution is contract law not public law)

- *Setting and enforcing hard deadlines for the 40 outstanding Case Questionnaire Reviews, requiring all to be submitted within a month or have their application removed from the Scheme.*

The courts are not in good place to complain about robust case management by others, and in principle sensible administrative rules to make any sort of scheme run smoothly are fine. If we haven't previously indicated a cut off, we need to give fair notice, and make sure the SMPRs get it. A month might be a little short, though not critically so. We also need to be very clear that missing the deadline, even by minutes, means the possibility of entering the scheme is gone for ever. A really fair approach would be to indicate the deadline, and send a reminder say 14 days before. It is difficult to imagine anyone who does not enter the scheme before the deadline having any possible excuse then, though I can understand you might prefer to impose the deadline and then just let it run.

Stephen Hocking
Partner

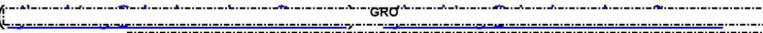

GRO

 Think of the environment. Do you need to print this email?

From: Rodric Williams 
Sent: 12 June 2014 20:26
To: Hocking, Stephen
Cc: Chris Aujard; Belinda Crowe; Donnelly, Aimee
Subject: Re: Strictly Private & Confidential - Subject to Legal Privilege

Stephen - Chris has cleared his morning. Could you please let us know when you would be able to speak to him to help him prep for Paula at 12?

Kind regards, Rodric

From: Rodric Williams
Sent: Thursday, June 12, 2014 03:58 PM
To: Hocking, Stephen 
Cc: Chris Aujard; Belinda Crowe; 
Subject: RE: Strictly Private & Confidential - Subject to Legal Privilege

Stephen,

Our CEO has asked for a briefing on this at midday tomorrow.

Would you be able to have a call with us sometime tomorrow morning to give us an overview of how you see the JR risks for Option 2? It's going to need some diary juggling so have copied Amy in case she can help.

Kind regards, Rodric

Rodric Williams I Litigation Lawyer



From: Rodric Williams
Sent: 11 June 2014 12:07
To: Hocking, Stephen; GRO
Cc: Chris Aujard; Belinda Crowe
Subject: Strictly Private & Confidential - Subject to Legal Privilege

Stephen,

As we have just discussed, following its meeting yesterday our Board is minded to pursue "Option 2" for taking forward the "Initial Complaint Review and Mediation Scheme" (see para 3.1 of the attached "Board Summary Paper").

The Board would now like you to advise whether decisions to take any of the steps associated with Option 2 could give rise to an application for judicial review. Those steps (outlined in paras 3.3-3.7 of the attached "Annex Sub Committee Paper...") are:

- Making it clear that Post Office will deal with criminal cases last (they take longer because of the volume of documentation and the legal clearance is more complicated and dealing with them in the bulk of other investigations slows down progress on other cases) and that we would only mediate in these cases in exceptional circumstances, believing that the correct next step for any of these applicants would be the Criminal Courts.
- Moving Second Sight to a fixed fee structure with a clear work-plan (potentially with incentives to increase the speed of work) and regular quality and delivery review meetings – potentially saving several hundred thousand pounds depending on the fee level agreed.
- For cases which date back to pre-2007, for which records should have been destroyed under Post Office's data retention policies (as is best practice), carrying out a review of any available data to see if it supports a full investigation being taken forward. Where insufficient evidence still exists, no further work would be undertaken.
- Disseminating the Linklaters advice, making clear that Post Office considers itself to have very limited liability and almost no liability in respect of consequential loss. [nb. In practice this will involve disseminating a statement of our legal position informed by advice which will remain privileged.]
- Setting and enforcing hard deadlines for the 40 outstanding Case Questionnaire Reviews, requiring all to be submitted within a month or have their application removed from the Scheme.

In providing your advice, please again assume that any JR application would be properly articulated with the assistance of specialist counsel, and please again identify for us any steps which we could take to minimise the risk of a JR application, and/or increase our ability to successfully defend such an application.

As we discussed, we would like to receive your advice by Friday 13 June 2014 so that it can inform our approach to a meeting of the Scheme's Working Group on Monday 16 June 2014.

Please let me know if this will present any difficulties for you, or if you need anything further.

With thanks for your continuing support, Rodric

Rodric Williams I Litigation Lawyer



This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: **GRO**
GRO

DAC Beachcroft LLP - Legal Team of the Year - Public Sector (HealthInvestor Awards) and Legal Adviser of the Year (Laing and Buisson Independent Healthcare Awards)

This email is sent for and on behalf of DAC Beachcroft LLP which is a limited liability partnership, registered in England and Wales (registered number OC317852), regulated and authorised by the Solicitors Regulation Authority. Our professional rules may be accessed at www.sra.org.uk. We use the word "partner" to refer to a member of the LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications. A list of the members (all of whom are solicitors in England and Wales, exempt European lawyers or registered foreign lawyers), together with a list of those persons who are designated as partners, is available for inspection at our registered office, 100 Fetter Lane, London, EC4A 1BN. For full details of the terms under which this email is distributed please go to <http://www.dacbeachcroft.com/pages/legal-notice>. Please read our DAC Beachcroft Group privacy policy at <http://www.dacbeachcroft.com/pages/privacypolicy>