

From: Mark R Davies GRO
Sent: Wed 04/02/2015 5:17:00 PM (UTC)
To: Rodric Williams GRO
Cc: Melanie Corfield GRO; Jane Hill GRO; Mark Underwood GRO; Patrick Bourke GRO; Tom Wechsler GRO; Belinda Crowe GRO; Chris Aujard GRO; Angela Van-Den-Bogerd GRO; Parsons, Andrew GRO
Subject: RE: Legal Position on Legal Advice

Many thanks Rod.

As the BBC is pushing on this point, and as it appears that SS has misled the committee, I propose to say to the BBC: "There were some serious inaccuracies in elements of the evidence given to the committee by other parties. I would like to share these with you as they directly relate to your questions. However you will appreciate that we should inform the committee about these [serious] and misleading comments before we inform the media. We also, you will further appreciate, need to understand from other parties why these comments were made."

Views?

Best wishes,

Mark

Mark Davies | Communications and Corporate Affairs Director

1st Floor, Banner Wing, 148 Old Street, London, EC1V 9HQ

GRO Postline GRO
GRO Mobex GRO
GRO



From: Rodric Williams
Sent: 04 February 2015 17:07
To: Mark R Davies
Cc: Melanie Corfield; Jane Hill; Mark Underwood; Patrick Bourke; Tom Wechsler; Belinda Crowe; Chris Aujard; Angela Van-Den-Bogerd; Parsons, Andrew
Subject: RE: Legal Position on Legal Advice

Mark,

With apologies for the delay, "YES" is the short answer to your question "Have we been sharing with SS the information disclosed to the Defence in connection with a prosecution?"

This directly contradicts the assertion Ian Henderson made to the Select Committee that we were not engaging with them over these files (see Transcript Extract below).

The background is:

- SS made ad hoc requests for legal/prosecution files from c. March 2014.
- These requests are first noted in the minutes of the June 2014 Working Group meeting, then again in October

2014.

- SS made a bulk request for 20-25 legal/prosecution files in c. October 2014.
- POL has addressed those requests (through solicitors Bond Dickinson) by:
 - o locating the files within POL (where available);
 - o reviewing the files for irrelevant and/or privileged documents (following standard civil litigation document disclosure practices);
 - o uploading the relevant documents (redacted where appropriate) onto the Scheme's "Huddle" document site;
 - o notifying SS once this has been done.
- POL has also kept SS (comprehensively) updated along the way with a case tracker, most recently on 28.01.15, i.e. last Wednesday (see attached). Ian Henderson was sent that email.

NB Insofar as withholding our legal advice is concerned, that advice reflects POL's lawyer's opinion of the matters in issue. It is right that this is withheld for the reasons I set out in my first email, and also because POL is paying SS to form their own opinion on those matters, independently of POL (i.e. SS are not reviewing or providing their opinion on the advice POL receives).

TRANSCRIPT EXTRACT:

Q94 Nadhim Zahawi: What he is asking you for—there is no wriggle room—is to provide the prosecution files going forward. Will you commit to doing that? That is all I am asking.

Angela van den Bogerd: What I am saying is that we have already been exchanging that information over the last few weeks.

Q95 Nadhim Zahawi: So you have been providing them?

Angela van den Bogerd: We have been providing that over the last few weeks.

Q96 Nadhim Zahawi: Is that right, Mr Henderson?

Ian Henderson: No, it is not, I am sorry to say.



From: Mark R Davies
Sent: 04 February 2015 08:12
To: Rodric Williams
Cc: Melanie Corfield; Jane Hill; Mark Underwood; Patrick Bourke; Tom Wechsler; Belinda Crowe; Chris Aujard; Angela Van-Den-Bogerd
Subject: Re: Legal Position on Legal Advice

Thanks Rod - very comprehensive.

On your final point:

14. We can therefore share with SS the information disclosed to the Defence in connection with the prosecution, which includes (so as to comply the prosecution's duty of disclosure) all evidence which assists the defence or undermines the prosecution. [Not that SS's comments on it will carry any weight – it would simply be inexpert opinion]

Have we done that and should we?

Mark

Mark Davies
Communications and Corporate Affairs Director
Mobile: GRO

Sent from my iPhone
On 3 Feb 2015, at 23:14, "Rodric Williams" GRO wrote:

Mel – here's my overview of the "Legal Advice" position:

1. Like all businesses, POL takes legal advice on its activities, including in connection with the Scheme.
[This is hardly surprising - it's an alternative dispute resolution scheme addressing serious issues with legal ramifications (safety of convictions, claims for compensation etc...).]
2. POL's legal advice (like that obtained by any company, individual or function of government) is "privileged", i.e. it's private and confidential, and can be withheld from production to a third party or the court.
[Technical point – privilege can be trumped in rare occasions, including in response to a CCRC enquiry and possibly in connection with a Select Committee hearing.]
3. The "privilege" lasts unless it is waived, e.g. if the advice is no longer kept confidential.
4. Following SS's appointment in 2012, POL disclosed documents to it in connection with its initial, general exploratory investigation ("Phase 1"). This disclosure included some privileged documents.
5. However, POL expressly maintained (i.e. did not waive) privilege over these documents. SS expressly acknowledged and accepted this.
6. Following publication of SS's July 2013 Report, SS's work shifted to helping resolve individual cases submitted to the Scheme ("Phase 2"). This is expressly recorded in SS's 1 July 2014 engagement letter.
7. POL does not consider it appropriate to share privileged information with SS in Phase 2:
 - a. Under Phase 1, the privileged documents were provided to SS only, and under strict preservation of privilege;
 - b. *However, SS's Phase 2 work is shared with applicants, their advisors and other third parties (e.g. JFSA).* This means privilege is more likely to be waived, and therefore capable of being used in court proceedings;
 - c. This in and of itself justifies the different approach to providing legal files, especially given the JFSA's explicit threat of litigation, involvement of CCRC etc;

- d. SS's request for "legal" documents is vague and general, and therefore could be seen to cover *any* or even *all* legal advice – this is patently unreasonably wide.
- 8. SS have not explained why they need access to our legal advice:
 - a. Matters of law are outside its areas of expertise as accountants;
 - b. SS expressly accept matters of criminal law and procedure are outside their scope of expertise.
- 9. No one else has explained why POL, uniquely among those who receive legal advice, should waive the privilege inherent in that advice.
- 10. In Select Committee evidence, SS's Ian Henderson said [RW paraphrasing] that he wasn't convinced that POL had the evidential basis to bring a prosecution [RW: need to check transcript]
- 11. Despite having acknowledged that criminal law and procedure is outside his area of expertise, IH's asserted authority in these matters comes from having given evidence in support of a CPS prosecution.
[At best, this make him an expert in the matters on which he gave evidence. This no more makes him qualified to opine on matters of criminal law and procedure than holding the builder's ladder makes me an expert in house building]
- 12. We do not have to convince IH that we have sufficient evidence to bring a prosecution - he doesn't know anything about this subject.
- 13. We do however have to convince :
 - a. Ourselves as prosecutor – in particular that “there is sufficient evidence to provide a realistic prospect of conviction”, i.e. that the evidence satisfies the Evidential Stage of the Full Code Test in the CPS's Code for Crown Prosecutors;
 - b. Defence Counsel;
 - c. The Defendant (if s/he pleads guilty); and
 - d. The Courts.
- 14. We can therefore share with SS the information disclosed to the Defence in connection with the prosecution, which includes (so as to comply the prosecution's duty of disclosure) all evidence which assists the defence or undermines the prosecution. [Not that SS's comments on it will carry any weight – it would simply be inexpert opinion]

Please let me know if you need anything more.

Kind regards, Rod



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