BEIS0000963

From: Munby, Sarah (BEIS)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E997244C0A814AC2962DA40970EFF0EC-MUNBY, SARA]

Sent: Thur 27/08/2020 10:47:35 AM (UTC)

To: Creswell, Carl (Professional Business Services, Retail & Post Directorate); GRO; Cooper, Tom - UKGI; GRO; Watson, Richard - UKGI; GRO; Mark Russell; GRO; Donald, Charles - UKGI; GRO

Cc: Permanent Secretary; GRO

Subject: RE: Highly confidential. POL Litigation/Governance

OFFICIAL-SENSITIVE

Am in same camp as Richard that we will want to probe – was the advice "this looks all ok so you don't need to feel you need to share it with the Board" or was it genuinely "legally you shouldn't share this with the Board". And in either case why wasn't it challenged.

From: Creswell, Carl (Professional Business Services, Retail & Post Directorate)
GRO
Sent: 27 August 2020 10:35
To: Cooper, Tom - UKGI; GRO; Watson, Richard - UKGI
GRO; Mark Russell; GRO; Donald, Charles - UKGI
; Munby, Sarah (BEIS); GRO
Cc: Permanent Secretary; GRO
Subject: RE: Highly confidential. POL Litigation/Governance

OFFICIAL-SENSITIVE

Sounds very sensible, Tom. I know that Sarah may not be able to make it given the pressures on her diary, but I can always update her separately if that is the case.

Many thanks,
Carl

Department for Business, Energy & Industrial Strategy

Carl Creswell
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From: Cooper, Tom - UKGI; GRO
Sent: 27 August 2020 10:28
To: Watson, Richard - UKGI; GRO; Mark Russell
GRO; Donald, Charles - UKGI; GRO; Munby, Sarah
(BEIS); GRO; Creswell, Carl (Professional Business Services, Retail & Post

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Directorate) < GRO >
Subject: RE: Highly confidential. POL Litigation/Governance

Richard - I don't see how, even with rose coloured specs on, anyone would see a green light in the QC's report, although it's possible that is how it was presented to Tim given way it was described to the Minister in the letter he wrote updating her on progress.

Unless others disagree, I'll ask Lily to set up a call as suggested by Richard.

Tom

From: Watson, Richard - UKGI < GRO >
Sent: 27 August 2020 09:30
To: Russell, Mark - UKGI < GRO > ; Cooper, Tom - UKGI < GRO > ; Donald, Charles - UKGI < GRO > ; Munby, Sarah (BEIS) < GRO > ; Creswell, Carl (Professional Business Services, Retail & Post Directorate) < GRO >
Subject: RE: Highly confidential. POL Litigation/Governance

Thanks Tom

I think a further discussion would be helpful.

In terms of Tim's explanation of why he did not disclose the advice to the board clearly the QC's report was confidential and legally privileged but that in itself does not explain why it should not be disclosed to the board. There is no risk of a company's legal privilege being lost or confidentiality being breached simply by legal advice it has received being disclosed to the board. So I am really struggling to understand why Jane Macleod gave that advice.

At the risk of coming at this with the great benefit of hindsight I would like to think that if a company Chair was told by the company's general counsel that they should not disclose something to the board because of confidentiality and/or legal privilege concerns they would strongly challenge that advice if they otherwise felt that the board should be aware. There might be cases where, for example, individual board members were conflicted (or perhaps implicated) which might be a reason not to share something with them but the general principle is, as you know, that the board acts collectively.

I wonder if what actually happened in this case is that Tim was comforted by the QC's report (which he read as effectively giving a green light to everything POL had done) and together with the advice Jane gave him and the fact of the litigation he came to the view that there was no need to share the QC's report with the board.

Kind regards

Richard

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Richard Watson | General Counsel

UK Government Investments

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Follow on

From: Russell, Mark - UKGI < GRO
Sent: 26 August 2020 11:32
To: Cooper, Tom - UKGI < GRO Donald, Charles - UKGI GRO Munby, Sarah (BEIS) < GRO Creswell, Carl (Professional Business Services, Retail & Post Directorate) GRO Watson, Richard - UKGI GRO
Subject: RE: Highly confidential. POL Litigation/Governance

Thanks, Tom.

This has parallels to Magnox where the board relied heavily on internal legal counsel and didn't commission second opinions.

If we are considering what action, if any, is taken against Tim then don't we/BEIS need a view in addition to the SID – probably a legal view? Was it reasonable, at the time, for Tim to rely solely on Jane's guidance?

Richard W is probably best qualified to opine!

From: Cooper, Tom - UKGI < GRO
Sent: 26 August 2020 10:17
To: Donald, Charles - UKGI GRO Munby, Sarah (BEIS) GRO Creswell, Carl (Professional Business Services, Retail & Post Directorate) GRO Russell, Mark - UKGI < GRO Watson, Richard - UKGI GRO
Subject: Highly confidential. POL Litigation/Governance

An update on our previous discussions about Tim Parker's role in commissioning, and following up on, the QC's recommendations that were made shortly after Tim was appointed Chairman of POL.

Since we last spoke:

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- The Board received an update on the Herbert Smith report looking at the key events and decisions regarding Horizon. While there is more detail and it remains in draft, the account of what happened has not changed materially
- The NEDs met to discuss the report on 28 July. Tim was asked about the QC's report and why it wasn't discussed with or disclosed to the Board. Tim said that he was guided by Jane Macleod, the company's counsel at the time, who gave advice that the document needed to be kept confidential because of the upcoming litigation and also raised privilege issue. He said he relied on this advice.
- I have spoken to Ken McCall, POL's SID, and Carla Stent, who is the other NED who was on the Board at the time. Ken has yet to finally conclude on this but his current view is that the legal advice was flawed and Tim made an error of judgement in relying on the advice. But in Ken's view it would be unfair to sanction Tim given he was relying on legal advice.
- In terms of next steps, Ken plans to speak to Carla and possibly some of the other NEDs. He would be willing to report in to BEIS on his findings if we want his views formally.

Please let me have your thoughts on this. I should mention that if BEIS wants to take a different view and take some action, the window for doing so is closing. The review into Horizon lessons learned (which will include an account of the past actions of the management, Board and shareholder) will probably be announced in September. Once that is underway, I expect it will be difficult to make any unscheduled changes to the Board as we found with NDA.

Tom

Tom Cooper
Director
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