
From: Hugh Flemington[IMCEAEX-
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E08821F432B3@C72A47.ingest.local]
Sent: Mon 02/09/2013 11:08:11 PM (UTC)
To: Paula Vennells[██████████ GRO ██████████]
Cc: Alwen Lyons[██████████ GRO ██████████]
Subject: Fw: Legally privileged and confidential: Lessons learned [BD-4A.FID20472253]

Hi Paula

Please see below comments from both Simon Richardson and Andy Parsons regarding risks of a LL review at this stage. It's mainly a case of the negative interplay with other items already currently in play. You will also see Simon is happy to come and discuss with e.g. Alice if that would help.

Kind regards

Hugh

From: Richardson, Simon [mailto:██████████ GRO ██████████]
Sent: Monday, September 02, 2013 10:25 PM
To: Hugh Flemington
Subject: Legally privileged and confidential: Lessons learned [BD-4A.FID20472253]

Hugh

Attached are Andy Parsons comments on the terms of reference. My covering email is to supplement Andy's comments with a few of my own primarily with my client relationship hat on. I appreciate that this email and Andy's may have wider circulation and my comments are made with that in mind. I have not incorporated Andy's email into mine as there are separate and very specific points covering the range of legal issues he has been advising upon.

1. The criminal proceedings

There is a need to be extremely cautious here. The Post Office has various duties as the prosecutor and the Court of Appeal will take a dim view of any action which prejudices any appeals that may come before it. It may not be the intention to stray into those areas but the terms of reference say "review the handling of alleged issues/concerns about Horizon" and it is, of course, Horizon and those concerns which go to the heart of complaints about the criminal prosecutions. Staying clear of them will be difficult and, as we know, once stories emerge of reviews, those with particular agendas will then present their version of the intentions behind the Review.

2. The MPs and BIS

As Andy says the comments from the MPs has by and large been favourable and both the MPs and Jo Swinson have placed great store in Second Sight's report. Their report may be criticised, but I suspect there is a real risk of greater criticism of the Post Office now if it seen to be taking steps which suggest it may be undermining a report the MPs and Jo Swinson rely upon.

3. The Mediation Scheme

The only point I would add to Andy's comments here, are that the Post Office could take advantage of the work of the Chairman of the scheme. It will be a senior and respected figure who, in overseeing the scheme, will gain a very good understanding of the issues including those that lead to Second Sight being appointed and of their performance. You would not want any Review to conflict with the Chairman's view and, indeed, I see no reason why she or she could not be asked to prepare a report that will cover many of the points that have been identified in the draft terms of reference, and the report should have the benefit of being well informed by virtue of the Mediation Scheme. At that point, if a review was thought necessary, the remaining points could be investigated.

4. Timing

This point is perhaps more of a personal observation but based on experience that Paula and I will have shared. I was appointed the moderator by RMG of a major disciplinary investigation where Paula was one of the disciplinary officers. This was because I was and am a fee paid employment judge (part-time judge is layman's terms). The disciplinary process did not proceed as expected and the non-executive directors were appointed to review what had taken place and to make recommendations. I was interviewed as part of that process. Had there been tribunal proceedings in place it would have been possible to have held such a review but most unwise, as it could have seriously prejudiced RMG's position in the proceedings. Here you have a criminal appeal review underway, a mediation scheme that has express approval from MPs and a government minister who has placed some reliance on the independent report. The JFSA appear to be prepared to buy into the mediation scheme which is to be chaired by a senior figure. There will be time enough to review what has taken place, if it is still considered necessary, but our strong recommendation is that for a number of reasons now is not the moment to commence that review.

We would be happy to come and talk through further our view with you/Susan and in particular Paula (or any other Board members) if she would find this of assistance.

Regards
Simon

From: Parsons, Andrew
Sent: 02 September 2013 22:17
To: Richardson, Simon
Subject: RE: Lessons learned

Simon

As discussed, please find below the high-level advice on the terms of reference for the "Lessons Learned Review" (**the Review**).

Kind regards
Andy

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In general, Post Office's desire to review past activity and improve in the future is understandable. However, the nature and timing of this Review presents several risks to Post Office (see below) and, critically, cuts across a number of other on-going activities.

For these reasons, I would recommend that, if this Review does need to take place at all, then it should be deferred for 6-12 months so to first allow Second Sight to be managed out and the Mediation Scheme to be completed.

1. DISCLOSURE OF THE REVIEW

Privilege - This Review will not be legally privileged. This may make it difficult (if not impossible) to resist publicly disclosing details of the Review (as well as any documents and emails produced in the course of preparing the Review) if a Freedom of Information Act (**FOIA**) request is made (by say the media, JFSA or a Subpostmaster).

Criminal disclosure - Should the Review reveal any concerns about Horizon or branch accounting processes, then Post Office may be obliged (under criminal procedure rules) to pro-actively pass this information to Subpostmasters involved in criminal prosecutions (both on-going and historic). In particular, recommendations for change could be interpreted as highlighting historic problems that would need to be disclosed.

JFSA / Second Sight - the Review envisages interviewing Second Sight and JFSA. If SS or JFSA (or any other third party) are interviewed then, in my view and based on historic conduct, there is little prospect of keeping this review private and confidential.

Public access - The review has been drawn up on the basis that it will remain private unless Post Office decides to disclose it. Given the above factors, Post Office should assume that the Review will end up in the public domain (and probably via a route that is not under its control).

2. RELATIONSHIP WITH OTHER ONGOING WORK

Brian Altman QC - Brian is the senior criminal QC engaged by Post Office to look into Post Office's conduct of past and future prosecutions. This work should be ring-fenced to allow Brian to work freely and independently. Hence, any consideration of criminal issues should stay outside the Review. In contrast to the Review, Brian's work will be legally privileged and could not be disclosed under FOIA.

Legal Advice - Any consideration or discussion during the Review of legal advice from in-house or external lawyers may cause the privilege in that advice to be lost. That advice would then potentially be disclosable in future court proceedings and open to FOIA requests. The advice will include internal assessments of particular Subpostmaster's cases as well as analysis of general legal risks to Post Office arising from contested civil court proceedings and criminal prosecutions.

Independent mediation chair - Post Office is looking to engage a Chairman to head up the Mediation Scheme for Subpostmasters (probably a senior civil servant or a retired Lord Justice of Appeal). This role is designed to ensure that Second Sight and Post Office work constructively and successfully as part of the Mediation Scheme. Although this role is not explicitly designed to be public facing, it would not be surprising if the Chairman's views on the performance of the Mediation Scheme and/or Post Office's management of Subpostmaster disputes were sought by the media and/or MPs. There is therefore a high risk of the Chair's role overlapping with the Review.

3. SECOND SIGHT

Second Sight - The focus of the review is Second Sight's work. If the Review criticises Second Sight and became public (which is a genuine possibility) this could significantly undermine Second Sight's trust in Post Office. They may become more defensive and more critical of Post Office as a result.

Mediation Scheme - Second Sight are currently a central part of the Mediation Scheme for Subpostmasters. If they were to pull out of the Scheme (on their terms rather than being managed out by Post Office), the Scheme would inevitably collapse. A collapse of the Scheme is likely to cause a very negative reaction from the media.

James Arbuthnot MP - JA considers Second Sight as his mechanism for holding Post Office to account. Criticising Second Sight may cause an adverse reaction from MPs.

4. OUTPUT OF THE REVIEW

Objective of the Review - Although the Second Sight report was critical of Post Office, generally Post Office has received positive feedback on its Mediation Scheme. Although Post Office may be disappointed by Second Sight's work to date (and as a result have been put under pressure by MP's / JFSA), these performance issues and pressures are now being effectively managed through the Mediation Scheme. It does not therefore seem strictly necessary to undertake a review into historic activities when a potential solution to these issues is already being implemented.

Starting premise - The first objective in the Review is to understand how Post Office could have worked more collaboratively and constructively with Second Sight and JFSA. This starts the Review on a negative footing and assumes that Post Office was wrong in its historic approach. This may not be the case - time may well justify Post Office's approach to this matter. Given that the issues around Horizon are not yet concluded, it would seem premature to start drawing conclusions about Post Office's performance at this stage.

Output of the Review - Recommendations for change coming out the Review need to be carefully considered in light of a number of issues (eg. Fujitsu relationship, network impact/cost, effect on criminal proceedings, etc.). It would seem difficult for a single Review conducted by one person to properly assess all these angles. In particular, the cornerstone of the current engagement between stakeholders (MPs, JFSA, Second Sight and Subpostmasters) is the Mediation Scheme. The structure of the Mediation Scheme is set by the Scheme Working Group (of JFSA, Post Office and Second Sight plus a Chairman once appointed) so there will be limited opportunities for the Review to influence this engagement.

Kind regards
Andy

From: Hugh Flemington [REDACTED] **GRO**
Sent: 02 September 2013 16:23
To: Parsons, Andrew
Subject: Fw: Lessons learned

Hi Andy

As discussed I've been asked for the advice per email below. Would you mind reverting to me in the first instance please.

Thanks

Hugh

----- Original Message -----

From: Alwen Lyons
Sent: Monday, September 02, 2013 03:16 PM
To: Hugh Flemington
Subject: Lessons learned

As per our conversation this morning. I would appreciate if you would get external advice on any risks in the lessons learnt review work. My concerns are specifically around FoI or disclosure requirements for our criminal prosecutions and civil actions.

Thanks

Alwen

Alwen Lyons
Company Secretary
[REDACTED]
GRO

Sent from Blackberry

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