
From: Patrick Bourke [GRO]
Sent: Mon 24/11/2014 6:49:21 PM (UTC)
To: Chris Aujard [GRO]; Rodric Williams [GRO]; Mark R Davies [GRO]; Belinda Crowe [GRO]; Alwen Lyons [GRO]; Tom Wechsler [GRO]
Subject: Scheme - Con with Counsel

Following our consultation with TW QC, I promised to circulate the very naked, headline, points that we took away for the benefit of recipients.

Alwyn - this is for info only. Mark Davies, Rod and I will work together tomorrow on how best this is reflected in an updated version of the handling strategy that is already in place, so that we can share it with PV/AP more helpfully and in its proper context.

In summary, then, TW QC advised that:

- 1.POL is a public body susceptible to judicial review, which acts in both public and private law functions;
- 2.However, the decisions it has taken and would now take in relation to the Scheme are private law in nature and therefore not susceptible to JR;
- 3.This is because the underlying claims, which the Scheme simply provides an umbrella mechanism for dealing, with are private law in nature (a breach of contract by POL or a breach of contract by SPMs);
- 4.The decision to set up the Scheme was probably not reviewable and, moreover, the decisions taken under the Scheme (eg by the Working Group or POL) are not now reviewable for the same reasons;
- 5.It follows that any decision to withdraw the Scheme is not reviewable either.

The key point is at 3 above: the Scheme is not about Horizon per se but instead about the individual claims that the Applicants may or may not have against POL (and vice versa) in contract or other private law.

The bottom line is that, now that we know what we know from our experience, and given how the Scheme has in fact played out (including the disengagement of JFSA from the central part of the process), we can now be much more comfortable than we perhaps felt we could be in the Summer to vary, alter or suspend the Scheme as it currently stands.

Mark - I will be in touch under separate cover about what you might like me to do tomorrow.

Kind regards

Patrick