

Message

From: Jane MacLeod
on behalf of Jane MacLeod
Sent: 21/05/2016 23:14:02
To: Mark R Davies
Subject: RE: SPARROW - ADVICE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE.
Attachments: Board Paper re Bates v. POL (17.05.16).docx

Mark

Apologies – I hadn't realised you weren't sighted on this.

The GE paper was walked in to the end of the GE meeting on 13/5. Thinking about it, you had had to leave a bit earlier I think – and if I have correctly remembered it, then that would explain your dilemma – for which I apologise. The main purpose of that paper was to explain the litigation timetable (assuming that the matter went all the way through – I didn't want people to think that this would all be over anytime soon) and to lay out the path for (a) getting agreement on who the internal 'client' would be (agreed as Tom Moran representing network) and (b) getting agreement for the establishment of the steering committee – on which Comms would be represented (although it hasn't met yet). The Board paper (attached) is a slightly cut down version of that paper and Paula's questions arise from the Board paper.

I hope that once you have had a chance to look at the two papers, things will be clearer and hopefully you will be more comfortable, but please let's chat on Monday. I won't reply to Paula's email from earlier today until we have had a chance to speak.

Sorry ...

Jane



Jane MacLeod

General Counsel
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Mobile number:

GRO

From: Mark R Davies
Sent: 21 May 2016 22:30
To: Jane MacLeod
Subject: Fwd: SPARROW - ADVICE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE.

Jane

I'm really unhappy about this. I don't understand what's happening here - I'm totally unsighted on all this. I can't possibly endorse the email to Paula having been put in this position. Have I missed something, or has someone else in my team been involved?

Mark

Mark Davies
Communications and Corporate Affairs Director

GRO

Begin forwarded message:

From: Rodric Williams <[REDACTED] GRO>
Date: 21 May 2016 22:20:55 BST
To: Jane MacLeod <[REDACTED] GRO>
Cc: Thomas P Moran <[REDACTED] GRO>, Tom Wechsler <[REDACTED] GRO>, Mark R Davies <[REDACTED] GRO>, Patrick Bourke <[REDACTED] GRO>
Subject: RE: SPARROW - ADVICE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE.

Thanks Jane - I think that looks really good, but have added a couple of glosses in red to para's 1 and 7.

Mark – I have attached the GE report for your reference.

Tom – the Board report was essentially the same as the GE's, just stripped of the sections concerning internal management.

I hope this helps. Please let me know if you need anything more.

Kind regards, Rod

From: Jane MacLeod
Sent: 21 May 2016 17:51
To: Rodric Williams
Cc: Thomas P Moran; Tom Wechsler; Mark R Davies; Patrick Bourke
Subject: SPARROW - ADVICE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE.

All

Further to Paula's email earlier today, please see below my suggested advice. Please reply to this email or call me with any comments asap.

Patrick - As discussed last week there will continue to be a range of issue to be addressed outside the formal litigation process. In order to free Rod to focus on the legal issues with BD, would you please 'project manage' this from an internal perspective? This will include a number of responsibilities – not least managing the actions list and risks/issues list.

Thanks everyone

Jane.

"Paula

You have asked us to advise on the questions set out below. I have responded as requested, having also discussed the matter with Mark, Tom and others. I will be prepared to address these issues as part of my briefing to the Board on Tuesday.

- 1) who have we engaged as our primary legal advisers alongside BD? If BD alone, are they equipped - experienced enough and street wise enough? And do they have specialism/experience in point 3 below? (You may have mentioned Linklaters in this context?)

We have instructed Bond Dickinson to act as our solicitors on the basis that they have advised us throughout on Sparrow and have a very deep understanding of the history, the individual cases and the political sensitivity of Sparrow. They are a top ranked firm with the depth of resource and experience to represent Post Office in this litigation. In addition we have retained leading commercial barrister Tony Robinson QC who has extensive experience with group litigation and a wide background in civil litigation. (<http://www.oecclaw.co.uk/barristers/profile/anthony-de-garr-robinson-qc>). Tony will be key to developing and implementing the litigation strategy and when we interviewed him on Friday he had already grasped the political significance of the case. While Linklaters advised in the early phases on some aspects of Sparrow, they do not have an in depth understanding of the issues and would now take a considerable time and very significant cost to become sufficiently familiar with the necessary complexity of the issues and the individual cases. It is also worth noting that no matter what we do PO will no doubt be accused of being the 'big bad corporate', Bond Dickinson are in that sense a much better match to Freeths, and bringing in a magic circle city firm would only reinforce the impression of a heavy handed approach.

2) who/what is our internal resource/governance?

The PO legal team (Rod Williams) and myself will work with BD. As set out in the GE board paper, and as discussed and approved at the GE meeting on 13 May, Tom Moran will be the internal 'client' for these purposes and his role will be to ensure that the overall strategy of the litigation protects PO, its network and attractiveness to future agents/postmasters. Both in this and in the management of the litigation, he will be supported by a Steering Group which will comprise representatives from across the business. At GE we discussed the following as proposed members: Tom Wechsler (representing you), Angela van den Bogerd, Mark Davies, Patrick Bourke, a representative from Finance (tbc), as well as Rod, myself, representatives from BD and when necessary, Tony Robinson QC. Key/strategic decisions will be discussed at GE.

3) I won't describe this correctly but you will follow my point (it relates to Sir Tony Hooper's concern and one of the issues at the heart of the Hillsborough case): can we (Al, Neil, Kevin and myself) have a deep dive on the issues related to the (im)balance of power of the institution vs the individual. We need to understand this irrespective of Sparrow.

One of the themes underlying the claim from Freeths turns on the nature of the contractual relationship between PO and the individual agents and whether we are in breach of an implied duty of 'good faith' (among other challenges). Over the next 2 months as we develop the response to Freeths' letter we will examine each of the themes raised by Freeths (including all those relating to the contract and the relationship between POL and postmasters) with a view to determining what (if any) weaknesses there are, and the appropriate strategy to address these. Where we believe there are issues, these will be flagged with a view both to addressing these on a BAU basis, as well as determining the 'right' strategy to address them in the litigation. Tom and the Steering Group will be critical to this analysis so that we maintain the right balance. Commercially we must ensure that the outcome from the litigation is to validate that the balance of power was and is fair. We will discuss the output of that review and our recommendations at GE.

4) the paper is well written, balanced and reassures me we will handle it well. Thank you. Notwithstanding... could you/Mark put on your blackest hats and think through the worst outcomes: I would like a downside horizon scan. Eg., are there any judicial review or (mis)use of public funds angles at all - costs expended to date, failure of our own mediation mediation scheme.

Noted. We will develop a paper for the Steering Group and GE to consider these risks.

- 5) Horizon expert - the board note doesn't cover this: we need to brief the new NEDs and remind the others - could you/Tom give me a speaking note.

Deloitte are currently undertaking work to address certain of the recommendations made in the Chairman's report relating to Horizon. In commissioning that work we were cognisant that it would address (or lay the basis for) not only the recommendations of the Chairman's report, but also potential litigation, and possibly, prosecutions should we consider it appropriate to re-commence prosecutions against post masters (this is one of the issues that we should consider under 3) above). Both QCs that we interviewed recommended that we address the 'Rudkin' allegation – that is whether it is possible for PO/Fujitsu to remotely alter branch transactions without this being visible to the Postmaster. This is one of the streams of work under the Chairman's review and is therefore already underway.

Note that we will be considering how much further to go in addressing the recommendations from the Chairman's report in light of the litigation, and given that the same issues are now likely to be addressed through the litigation.

- 6) Stakeholders section: paras 22 and 23 - needs to include more on political, Government and IR stakeholders. Eg.. keeping ministers and MPs briefed and calm in the run up to the next GE; managing the CWU/NFSP; specific journalists and media interest; etc. Could Mark/Tom provide a speaking note.

We have already discussed with Mark the need to work closely together on a communications strategy, and this will recognise the interest of various stakeholders – including those you have identified. However, as flagged in the GE discussion, we need to be extremely careful what briefings we provide. While managing stakeholders will be important, we need to understand the risks to both them and PO inherent in such briefings.

- 7) I want to be sure we share all angles with the NEDs so they are fully appraised as to how noisy/difficult it could become. (At what point might it be sensible to give the board a deep dive, if the timetable plays out as you indicate?) I believe we will manage this well with our new board.

As with the GE discussion, I intend to make the point strongly that we will receive adverse coverage and that it will be very difficult – and indeed unwise – to respond in the press when the Court is now the forum in which the postmasters have elected to have these matters resolved. I don't believe it would be a good use of the Board's time to have a deep dive at this time. However once we receive the actual claim and we understand exactly what issues will form the basis of their case (and we have developed a strategy to expedite that), we will then be able to provide the basis for a more useful discussion. Based on the proposed timing for our response and the likely interactions after that, I believe it will be at least August before we have more clarity as to the likely issues. In any event, I propose to provide a brief update report to each Board meeting. This needs to come from me as a noting paper in order to maintain privilege."