
From: Permanent Secretary[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3109B3DC828545FFBF265AAB4BEC9017-SECRETARY,]
Sent: Thur 21/11/2019 10:52:34 AM (UTC)
To: Creswell, Carl (Professional Business Services, Retail & Post Directorate) [REDACTED] **GRO**
Cc: Permanent Secretary [REDACTED] **GRO**
Subject: FW: POL mediation - ahead of SoS 121

Carl

See Alex's response below – hopefully you can still read. Does it make any sense? I confess to total ignorance here as picking this up fresh.

Alex

From: Chisholm, Alex (BEIS) [REDACTED] **GRO**
Sent: 20 November 2019 18:57
To: Permanent Secretary [REDACTED] **GRO**
Cc: Permanent Secretary [REDACTED] **GRO**
Subject: Re: POL mediation - ahead of SoS 121

Thanks.

Are we sure it is the mediation meeting SoS wants postponed? Hannah said Court decision so I thought perhaps this meant the Horizon judgment? I assume we could not delay publication of a judgment even if it would reflect badly on a government company and attract political comment? Please check with Patrick Kilgariff if any precedents.

If it is the mediation (which makes some sense as that is for decision re settlement range) then I assume this is to a timetable set by Court and parties to litigation have to comply with it - yes? It is unlikely to be resolved at first attempt and I would not foresee a lot of fallout from trying to mediate, lawyer to lawyer. HMG Policy has encouraged mediation in civil disputes for years now. If contrary to good practice and POL wishes and legal advice the government instructed POL to refuse mediation that would certainly be a major negative story. I could not recommend that.

A

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From: Permanent Secretary [REDACTED] **GRO**
Sent: Wednesday, November 20, 2019 6:14:36 PM
To: Chisholm, Alex (BEIS) [REDACTED] **GRO**
Cc: Permanent Secretary [REDACTED] **GRO**
Subject: POL mediation - ahead of SoS 121

Alex,

Hannah has already flagged in an earlier e-mail that it'd be handy for you to raise POL mediation at your catch up with SoS tomorrow.

Sharing the specific advice prepared by UKGI, BEIS POL policy and respective UKGI / BEIS legal teams on prospect of seeking to delay mediation:

- The Secretary of State has no legal power to intervene to move the mediation date, and Cabinet Office have confirmed that it is essential business that can proceed during the pre-election period. The only way in which we believe we could influence the date would be to say that we are unwilling to approve the settlement range and request that POL therefore considers postponing the mediation.
- But Ministers should be aware of the significant risks of doing so. The date has been agreed between the parties to the litigation. The Court has ordered the parties (of which Government is not one) to consider alternative ways to resolve the dispute and is aware this mediation is taking place. If POL were to withdraw at this very late state they would have to make clear that it was because the Department would not give them authority to offer any sum in settlement. As far as we are aware it would be unprecedented for Government to seek to intervene in a mediation in this way.
- There would be a significant risk of drawing BEIS Ministers into public criticism of POL's approach to the litigation if we were to take this step. It would be wholly counter to the Department's position that this litigation is an operational matter for POL and – because it would probably become public quickly – would raise questions about why Government is not willing to sanction a mediation. It is very likely to lead to adverse press coverage, damage our relationship with POL and risk any further participation by the claimants in POL's attempts to settle the litigation at a future stage.
- POL's external legal advisors have advised that that there is a high likelihood of losing on most of the claims which could expose POL, and therefore the taxpayer, to a higher overall payment than would occur through a successful mediation process.

Let me know if you'd like any further detail ahead of tomorrow's meeting.

Many thanks,

Oliver

Oliver Page | Private Secretary to Alex Chisholm, Permanent Secretary

E: T: M:
Department for Business, Energy and Industrial Strategy