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Message

From: Robert Swannell GRO
Sent: 23/12/2019 10:25:36
To: Robert Webb GRO
Subject: Re: Note for UK GI

Indeed it does Rob. The narrow issue we are looking at is how does a board best organise itself and respond to an event with obvious legal consequences or to actual launched litigation where there is obvious major/existential reputational (including political) risk as well as financial risk.

The issue in both the recent bits of litigation is that the executive and their lawyers were strongly of the view that the claims were spurious and should not be settled at any cost. In the face of that how does a Board (and the shareholder) ensure that, taking a broad view, that it is right to continue to defend. The issue is exacerbated by the fact that whatever view you might take of "doing the right thing" it has to stand up as manging public finances correctly and be defendable in front of the public accounts committee.

So when does protecting reputation and taking the moral right course trump " value for money" etc ? And how does a Board ensure that the executives and their well paid advisers are not talking their own book in asserting that an action is spurious?

The output we are looking for is a protocol for our teams and our nominated Board members on the relevant Boards so that they think through the issues early and don't set off on a long road of litigation without proper controls.

Happy Christmas to you too!

With best wishes

Robert

> On 23 Dec 2019, at 08:17, Robert Webb <GRO> wrote:
>
> Happy Christmas!
> Does this hint at the sort of topics you would like to cover in January?er
> Trying to put a bit of flesh on it.
> Rob
>
> Sent from my iPhone
>
> Begin forwarded message:
>
>> **From:** Robert Webb <GRO
>> **Date:** 22 December 2019 at 19:24:10 GMT
>> **To:** Rob Webb <GRO>, Angie Webb Webb <GRO>
>> **Subject: Note for UK GI**
>>
>> Note for UK GI
>> . Those of you who listened to the Reith lectures will have heard Jonathan Sumption expound the theory that the law is moving in to public policy spaces which used to be the preserve of politicians and the legislature . Litigation and class actions are moving into the area where detailed legislation is, sometimes

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deliberately, lacking, and are being used as an instrument of social change.
We can see this in the United Kingdom in particular, where the courts are being used as an engine to restructure companies and industries; the PPI mis-selling cases in the Banks are an obvious example but others emerge almost every month. Here are some examples ;

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Everyone has their own examples. The risks for a body like UKGI are obvious to see. The recent Post Office settlements are the trigger for this particular note but other risks could be guessed at merely from the list of its holdings ;-
Eg :-

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Plainly these companies will all have their risk registers, and will be mitigating and distinguishing between chronic risks (those which are endemic to their business) and acute risks (fortuitous accidents , explosions crashes etc) but I do not know if UKGI have gone to the next stage of doing some informal audit of the risks faced by the companies they hold or by the UKGI group in advance of any specific threat or claim, nor do I know whether there has been a look at the risk of accumulation of risk within UKGI? It often does no harm to spend a couple of hours with the exec leaders of the individual companies , listening but also giving them some ideas . " It couldn't happen here"? Test it .
Once a risk has crystallised the structure of the legal advice choices does not lend itself to effective early case assessment nor resolution on the part of Defendants .The usual fee structure of "another day another dollar" on the defence side tends to follow rather than to set the momentum of the claim. On the other side under their "no-win no fee" structure ,common to claimants ,the structure has the reverse effect. The limitation periods defining when a claim may be brought are generous and claimants can take time to choose the case and the forum and to strike only when ready, with the case assessed.These days their lawyers have skin in the game too; Defence lawyers do not.
If I might make a suggestion it would be the UKGI should conduct an informal and very light touch "sniff test" audit of their exposure based on the identifiable potential danger areas in their businesses and around any specific cases where some potential for a liability exposure is already emerging. The standard advice to large corporations is to fight cases which are bound to fail , but in respect of those which are not going to fail (be it in a Court of law or in the increasingly

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influential Court of Public Opinion)to do a fast early case assessment. This needs a political nose as well as a legal one .
The quicker the settlement the cheaper it usually is, in both of those Courts ; there is something to be learned from the Lloyds bank experience in Reading....That was a small regional issue, until it wasn't !

Rob Webb

Sent from my iPhone