

Message

From: Robert Swannell [GRO]
Sent: 14/01/2020 09:38:54
To: Christopher Saul [GRO]
Subject: Re: In confidence - Private and Confidential

Sorry!! Hope you are being rescued!

With best wishes

Robert

On 14 Jan 2020, at 09:29, Christopher Saul [GRO] wrote:

Am here - downstairs

Sent from my iPhone

On 9 Jan 2020, at 12:03, Robert Swannell [GRO] wrote:

Many thanks Rob and look forward to a good discussion on a seriously difficult topic!

With best wishes

Robert

On 9 Jan 2020, at 11:45, Robert Webb [GRO] wrote:

Thanks. This is a real topic!
A couple of preliminary prejudices;
Boards worry too much on justifying payments before an Auditor.
The Board are legitimate decision makers in deciding how much any non pecuniary Brand Damage is worth;
“ Go ugly early” .Often one can sense trouble before litigation is in the offing ; after Writs the game has often changed...
Rob
Sent from my iPhone

On 8 Jan 2020, at 16:47, Robert Swannell
<[GRO]> wrote:

Dear Rob and Chris,

First a very Happy New Year to both of you.

You have both very kindly agreed to come to a meeting at **9.30am on Tuesday, 14th January at 1 Victoria Street** to discuss the issue of how Chairs/NEDs and Boards generally can make the best decisions possible when faced with complex and potentially deeply damaging litigation. This email is to give you a bit of background and be clear about where we would like to get your collective wisdom.

As you both know, in recent times two entities where UKGI has held the shareholder role within government – The Nuclear Decommissioning Authority and The Post Office – have been involved in major litigation. In short the NDA was about a huge procurement exercise which the Judge determined was flawed; the Post Office case was about who should bear the cost of accounting differences thrown up by the Post Office's Horizon Computer system (a huge simplification!). In both cases this has led not only to losing at trial (against the strong advice of executives and the company's lawyers) but also in each case to excoriating judgements from the (same) Judge about their conduct both as litigants and on their behaviour on facts of the cases. In both cases expensive settlements/damages were required. In the NDA around £100million and in POL around £60million. In the case of NDA UKGI did not have a representative on the Board at the time of the underlying issues that gave rise to the litigate or when it was agreed to litigate but we were on the Board when the settlement was reached. In the case of POL we were, I believe, on the Board throughout.

If you were interested in looking at the judgements they can be found online but they are very long and I am not sure it is at all necessary for our purposes unless, like me, you are a train-spotter! *The issue we want to discuss is what*

protocols/checklist should a Board put in place immediately they are faced with litigation that appears to be very material in reaching an initial decision of whether to litigate or settle and what processes and controls should be in place if it is decided to litigate rather than settle. We should also discuss how a Board can best form a sensible judgement on when, and on what terms, a settlement should be made whether litigation is pursued or not.

The NDA Magnox case is subject to an ongoing enquiry by Steve Holliday. This enquiry was launched in March, 2017 soon after the award of damages in the case. Sadly, the Holliday enquiry has itself got mired in JR litigation and remains unpublished. It is still not clear when it will see the light of day but in the meantime its use has diminished with the passage of time and with the steps taken by the NDA and other parties involved. We did our own internal enquiry shortly thereafter and discussed it at our Board twice in 2017. I am attaching a paper that sets out some of the learnings from our internal enquiry and our conclusions. I think it is helpful background to our thinking on the issues although it precedes the Post Office Litigation and was based on the facts of a very large procurement that went wrong. **Please treat this is strictest confidence.**

I look forward to seeing you both next week.

With best wishes

Robert

<Extract from UKGI Internal report into the
Magnox contract[1].docx>