
From: Parsons, Andrew[redacted] GRO
Sent: Fri 13/12/2013 1:44:21 PM (UTC)
To: Rodric Williams[redacted] GRO
Cc: Jarnail A Singh[redacted] GRO
martin.smith[redacted] GRO
Subject: Privilege [BD-4A.FID20472253]

Rodric

David Oliver asked me yesterday about whether privilege attaches to the general governance work he is doing. My thoughts are below – do you agree?

Interestingly, the trickiest question is whether litigation privilege will arise, which of course turns on whether litigation is contemplated. For most cases I think we can broadly take the view that if the Scheme reveals a defect in POL processes, then litigation is clearly a risk. However, for those cases involving non-prosecuted applicants which are outside the limitation period, it may be difficult to argue that litigation is contemplated, when those applicants have not legal standing to commence proceedings.

Jarnail / Martin – are my comments below about criminal disclosure duties correct?

Kind regards
Andy

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David

Yesterday we discussed whether the general governance / risk documents and/or management information for the Scheme would be covered by legal privilege. My thoughts:

1. Any documents dealing with the Scheme as a whole are unlikely to attract legal privilege save that:
 - (a) Individual pieces of legal advice within those documents will be privileged (but would not make the remainder of a document privileged). In this context, "legal advice" means legal (not commercial) advice from a qualified lawyer, whether in-house or external.
 - (b) Information about individual cases within wider documents is likely to be privileged.
2. Notwithstanding the above, any document that is sent outside of POL (eg. to an SPMR, JFSA, SS, an MP, etc.) will not be privileged. For this purpose, people working directly for POL (eg. you and me) are considered to be part of POL.
3. Notwithstanding the above, a privileged document may still have to be disclosed in criminal proceedings in accordance with POL's prosecution disclosure duties.

For example:

- The settlement mandate for each case will be privileged as will any data taken from this mandate and reproduced in POL internal reports.
- The settlement policy is built on legal advice and so would be privileged. The board paper submitting the settlement policy to the board would also likely be privileged. However, other board papers about the Scheme may not be privileged.
- The RAID analysis is unlikely to be privileged save for that information within the analysis that is the product of legal advice.
- Draft investigation reports will be privileged and so could not be subject to FOIA / DPA requests. However, those draft reports (or parts thereof) may still need to be disclosed in accordance with POL's prosecution

duties.

Kind regards
Andy

Andrew Parsons
Senior Associate

for and on behalf of Bond Dickinson LLP

Bond Dickinson

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