
From: Patrick Bourke [redacted] **GRO**
Sent: Tue 05/04/2016 9:19:15 PM (UTC)
To: Mark Underwood [redacted] **GRO**; Rodric Williams [redacted] **GRO**; Jane MacLeod [redacted] **GRO**
Subject: RE: Sparrow Update - CCRC and Brian Altman QC

Likewise. I shan't be at Thursday's meeting but, as discussed, it's also my hunch we should proactively disclose the Swift report to the CCRC, rather than have it requested of us further down the line.

Best wishes.

Patrick

Sent from my Windows Phone

From: Mark Underwood [redacted]
Sent: 05/04/2016 21:33
To: Rodric Williams; Jane MacLeod; Patrick Bourke
Subject: RE: Sparrow Update - CCRC and Brian Altman QC

Hi Rod,

I agree with the approaches you have set out below.

I will add discussing whether or not to disclose Jonathan's report to the CCRC to the Agenda for our meeting with Jane on Thursday @3pm

Mark

From: Rodric Williams
Sent: 05 April 2016 19:07
To: Jane MacLeod; Patrick Bourke; Mark Underwood [redacted]
Subject: Sparrow Update - CCRC and Brian Altman QC

All – I thought I'd set out an update on where I had got to with Brian Altman's instructions and the CCRC. Apologies for the length, but I wanted to get it down in case we miss for some reason our next meeting....

Brian Altman QC

Brian has provided his initial thoughts on his instructions (see attached), which I summarise below along with where we think this takes us. This has grown out of how Brian responded to his instructions, so apologies if I have got ahead of myself rather than waiting for a con with him as originally intended.

1. Charging Theft / Sufficiency of Evidence

We will need to do a file review in order to satisfy Jonathan's Recommendation 1. This is because it would never be appropriate to bring a charge without a proper evidential foundation, and if (as alleged) we did so as part of a deliberate practice, this could amount to an abuse of process sufficiently serious to undermine the safety of convictions.

Brian sees the review as responding to Jonathan's report rather than any other duty, so if Jonathan agrees it could be scoped by reference to that report, i.e. a review to Scheme cases which have the specific scenario he

identified (charged with more than one offence; guilty plea to one offence with no conviction on the other).

Based on the "Scheme Data" spreadsheet, this would mean a review of 19 cases, 11 of which are with the CCRC. The majority of the cases are theft/false accounting, but also include some fraud charges which Brian thought would help show discretion being applied to individual cases rather than a slavish following of precedent. This strikes me as a good sample, and we can always expand the review if anything came to light which warranted further investigation or action.

Brian currently has good availability, so could get on with this in short order. We are keeping open the prospect of him using a junior.

NEXT STEPS:

If you agree, I will email Jonathan to get his buy in to the above approach. Brian can then draft an advice note outlining the scope of the review and why we're doing it. I can then coordinate the delivery of the documents to Brian, which I hope will be relatively easy given the collation of criminal files already done for various other purposes.

2. Balancing Transactions / Sealed Baskets

Brian cannot advise on balancing transaction and sealed basket disclosure unless and until we know we have "a real problem". This is consistent with the position he took on balancing transactions in August 2015, and to do otherwise could lead to unjustifiable, new claims being made of third party tampering.

I have told Brian that Deloitte is looking further into the balancing transaction and "sealed basket" issues in order to address Jonathan's Recommendations 4 and 5. It therefore seemed sensible to us to park this issue until Deloitte's work is further progressed, bearing in mind that we cannot in the meantime be accused of concealment because voluntary disclosure has been made to the CCRC.

NEXT STEPS:

If you agree, I will send Brian a short email confirming this part of his instructions is on hold pending Deloitte's work. I can also update Jonathan of this as a footnote to the email setting out the proposed approach for the criminal case review.

CCRC

After an extended game of phone tag, I spoke to the CCRC's Horizon cases team leader Amanda Pearce just before Easter. We covered quite a few admin points (on which I think you can be spared the detail), along with two more strategic points:

1. Second Sight

It has been suggested to the CCRC (they didn't say by whom) that they speak to SS, and would like to do so in order to demonstrate they had undertaken a thorough investigation. SS have told the CCRC they would like to speak to them (surprise surprise), but need our approval to do so.

I told the CCRC we wouldn't look to stand in the way of their work, but given our concerns about how SS strayed outside of their remit – particularly into criminal law matters - getting approval would be much easier if we had a clue as to how CCRC would approach any meeting, e.g. would we get the chance to respond to anything SS said, particularly if it was something not previously raised with us?

Amanda recognised that SS's reports contain a lot of bold statements without evidential support. They also said they would not simply rely on what SS said just because they said it, but rather would listen to try to understand what it is they looked at and found as forensic accountants, then take a view on what more they

may require. Amanda added the CCRC was very familiar with experts who stray outside their areas of expertise.

I appreciate we will be sailing into uncharted waters by letting SS speak directly to the CCRC, but I think it very difficult to say no. If we wanted/needed to, we could try to get a better idea of what they might say if we asked Jonathan or Christopher for a summary of what SS said in their meeting with them.

NEXT STEPS:

I need to get back to the CCRC with our position. Jane – can you make the call on whether we let the CCRC speak to SS, or does it need to go wider?

2. Status of Investigations / Disclosure of Swift Report

Amanda said they were approaching the stage of deciding whether there was anything left to be done (her words), noting that these were the sorts of investigations that could just keep on going. She also said they were starting to think about whether they needed any expert assistance to show they had followed all appropriate lines of enquiry.

This to me raised the question of whether, and if so when, we might want to disclose Jonathan's report to the CCRC. Providing the report to the CCRC sooner than later would demonstrate the serious and transparent (to them) efforts we are making to run down the various issues. It might also avoid the CCRC embarking on a course of action which could confuse and delay substantially the conclusion of their investigations. The risk of course is that we would need to provide to the CCRC the outcome of the further work being done on Jonathan's recommendations in circumstances where we don't yet know all of the outcomes.

My gut feeling is that we should disclose the report to the CCRC relatively soon. The CCRC are likely to hear about it through the Arbuthnot connection, and it fits within their informal request for any Board level reports (I am confident we would get a s.17 Notice for it if the CCRC knew of its existence). I'm reasonably comfortable about where we might get to with Brian's "sufficiency of evidence" review, but substantially less so with the Deloitte work, which in turn would feed Brian's advice on whether any disclosure is required (it would however demonstrate to the CCRC that we are thinking about that!).

NEXT STEPS:

Mark - at our next face-to-face meeting, could we please put disclosing Jonathan's report to the CCRC as an agenda item?

Again, apologies for the length of this note - it might at least make for a shorter meeting!
Rod

