
From: Jane MacLeod [GRO]
Sent: Sat 01/08/2015 6:56:53 PM (UTC)
To: Mark R Davies [GRO]
Subject: Re: Sparrow

Thanks Mark. We absolutely need to work together on this. I'd like to update Al first thing on Monday morning on our thinking, as he is in the place of preparing some 'least worst options' in the back pocket that can be offered for Thursday. I have also said to him that I would email Paula tomorrow with the background re L N-R meeting this week. I understand where he's coming from on the options point, and we should think about that (although I haven't been able to come up with anything that makes any real sense), but I am absolutely in the place that says we should stand firm.

As part of the verbal briefing to L N-R I want to given her background on the cases that will be discussed on Panorama, as well as on the cases that Kevan Jones and Andrew Bridgend are concerned about.

As to Panorama itself, I have been thinking about this for a while. I doubt we'll get consent from the relevant parties, but I have thought about writing to each of them saying words to the effect of ' we understand you have spoken to Panorama about your cases, so in that situation we consider that we are at liberty to comment on your case'. The issue here is the CCRC position, so I suspect that we would not want this to be an 'on the record' briefing. Nevertheless that may be enough to make Panorama think twice about how they position those cases.

Happy to discuss tomorrow (Sunday) if that would help, or we can talk on Monday morning.

[GRO]

Jane MacLeod
General Counsel
The Post Office

[GRO]

Sent from my iPad

On 1 Aug 2015, at 13:28, Mark R Davies [GRO] wrote:

Jane

I hope you are well. I'm back in the saddle after my trip and the team has been updating me regularly.

I'd like to attend the meeting with BNR as well. I think Mark's note sums up the position very well and now we are in control - as we still are - we should fight hard to stay there. I have been round and round on this so many times in the last three years and Mark is spot on below: the only thing which will satisfy the campaign is £s and we should not go there.

What isn't mentioned here is the work Jane Hill and I are doing via back channels into government. We should discuss on Monday. But it is crucial in my view we do not give way and continue to deal with this commercially. Otherwise it will never end.

See you on Monday.

Mark

Mark Davies
Communications and Corporate Affairs Director
Post Office Ltd

Mobile: **GRO**

Begin forwarded message:

From: Melanie Corfield **GRO**
Date: 1 August 2015 12:43:08 BST
To: Mark R Davies **GRO**
Subject: FW: Sparrow

fyi, so you get more up to speed re what is going on and our counter attack
Mel

From: Mark Underwood **GRO**
Sent: 01 August 2015 10:27
To: Melanie Corfield
Subject: FW: Sparrow

To see – so that you are up to speed on Shex

Mark Underwood
Complaint Review and Mediation Scheme
GRO

From: Mark Underwood **GRO**
Sent: 01 August 2015 11:26
To: Jane MacLeod
Cc: Patrick Bourke; Rodric Williams
Subject: RE: Sparrow

Thanks Jane,

Great note. We really have (pre and indeed since my time at PO) kicked the tyres in terms of the options available to Sparrow and as such you are absolutely correct that there is not a great deal more, if anything, that we can in fact offer. Even if we did, none would be able to deliver the outcomes necessary to stop the 'noise' namely - £'s and criminal convictions being overturned. I think the meeting next week is a really good opportunity to try and instil confidence into BNR.

If her concern is about the process followed- then we have evidence that every stage of the Scheme has been commented on positively, often by our detractors:

- we have the JA quotes about its design and funding, the fact the scheme was jointly designed & transparent to all at every stage (incl repeated offers to MPs to meet). We have also delivered the 3 commitments made, including the business user forum

- we have SS quotes about the investigations & Secretariat; and the cause for losses being human rather than software errors
- we changed to a presumption to mediate amid complaints that we were rejecting 90% (again JA) and that the process was slow;
- the CEDR letter proves we enter the mediations in good faith.
- The above in mind, the below extract from the Misra trial (M012) that Rod noted yesterday really is, strangely, applicable to where we find ourselves with BNR

*"Prof McLaughlan felt that before he ventured an opinion about the adequacy of Mrs Misra's training and her understanding he would want to see an independent evaluation of the training procedures and a record of how well Mrs M performed in training. The prosecution case is that you may think he is being unnecessarily purist about this and perhaps going beyond what as a matter of common sense is necessary. You will judge that. You will remember that I asked Prof M at one point how far things had to go and you will remember his answer. What I had in mind, for example, if you had an assessment of Mrs M's performance in her training would that be enough or would you have to have an assessment of the validity of the assessment process and how competent the assessors were? **Where does it end?** You will judge that"*

If the concern is about merit, then in terms of:

Criminal cases we have:

- the approach by Shoosmiths but no actual action (I believe)
- the press release from Edwin Coe LLP – but no approach
- no class action from H&C
 - Coomber Rich Solicitors in 2013 "We are now beginning the process of considering whether there can be any appeals against conviction which would obviously be on a case by case basis"
- the linklaters advice
- the Blackstone Chambers advice about the likelihood that the Scheme is open to Judicial Review (Low)
- No Appeals
- CK's review of all (400?) prosecutions back to 2010 – none merit concern that they may be unsafe
- The outcome of the CCRC review, when it comes

Non Criminal cases we have:

- I saw that in your note you felt the emphasis was on non-criminal cases, in which case the only concern they can possibly have, as we have offered to mediate all, is the outcome of those mediations or rather the lack of ex gratia payments being made in cases where there is no evidence to suggest they are deserved.
- As the CEDR letter proves we are entering mediations in good faith, if there were

merit, we would and indeed have made ex gratia payments – even where the case was time barred

- Some of these payments have been significant i.e. M086 ex gratia rising to 50K plus £140K ‘NT payment’ + 5k additional funding for her advisor. Interestingly this Applicant also parted company with, I believe, H&C in favour of One legal Services as she felt she was being used.

Ultimately, it is clear our stakeholders want £’s and convictions overturned. If our investigations had uncovered new evidence, then there would be just cause to do so, but ultimately I think we need to remember that the Scheme’s purpose was to assess whether or not Horizon had been the cause of losses in branches. It has not. Despite the pressure being applied to encourage scope and purpose creep, ultimately this is just noise and noise that we knew would happen. 10 March was the first time we put ourselves on the front foot. September 4th is another opportunity to do so. If we show confidence internally, it will I believe, instil confidence externally.

I know you already know this, the reason for the above was part therapy and part to remind me of bits to include in the presentation.

In your note you also requested we dig out a past options paper. I think the attached is the most recent version which ultimately led to the decision made on March 10. It includes all the options we touched upon yesterday.

I hope this helps

Mark

Mark Underwood
Complaint Review and Mediation Scheme

GRO

From: Jane MacLeod
Sent: 31 July 2015 18:14
To: Rodric Williams; Mark Underwood; Patrick Bourke
Subject: FW: Sparrow

See below

<image001.png>

Jane MacLeod

General Counsel
Ground Floor

20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile number: GRO

From: Jane MacLeod
Sent: 31 July 2015 18:13
To: Alisdair Cameron ([REDACTED])
Subject: Sparrow

GRO

Al,

I spoke to Laura at lunchtime. I asked Laura what she thought the issues were from LN-R's perspective. The messages from LN-R are clearly mixed and Laura wasn't really clear whether the concerns were as to merit or process. The three points I took away are:

- no one is opining on the merits of the case
- LN-R wants something to happen
- LN-R wants options.

The latter two are clearly consistent with the message that you received.

We need to be very careful around options given that it is not clear what the real concern is, although the emphasis seems to be on the non-criminal cases. I have said to Laura that we will:

- ask CEDR if they would be prepared to speak to either LN-R or BIS regarding their observations of the mediation process (which they conduct). In particular why mediations are "failing" (we have 8/20 mediations which failed to reach a resolution). CEDR has issued us a letter today setting out their observations of the process and have confirmed that they would be prepared to meet LN-R/BIS. Their letter confirms that one of the issues is that applicants expect the scheme to be about compensation and are therefore dissatisfied when that is not the outcome.
- reach out to the MPs that we have spoken to and see if they would be prepared to have a discussion with LNR about their observations. Patrick has initiated this and we are waiting to hear back.

There was an options paper developed last year and I have asked for this to be located and reviewed. The difficulty is that a review as to "merits" effectively replicates the judicial process. Notwithstanding mediation, the applicants all have the ability (either individually or through a class action) to start proceedings against PO. There are 3 law firms who have, over the last 3-4 years, been instructed to act for multiple applicants; however to date, nothing has emerged from that process. We have already funded each applicant in so far as we have (a) paid Second Sights' costs to review each applicants' file, and (b) made a contribution towards the applicants' professional advisers' costs of preparing for mediation. Further, there have been no applications to appeal convictions in relation to criminal cases.

The timetable for next week is still not clear. I have said to Laura that it is likely to be Paula and myself who will attend (assuming a meeting on Thursday), and that we will bring a briefing pack which we will talk to (a draft will be available on Monday "I am reviewing it further over the w/e). Laura is meeting Jane Hill here at FD on Monday afternoon, so I have said I will meet with her after that meeting so that we can review where we have got to. Laura & Richard are briefing LN-R on Tuesday on another matter, and Laura is concerned that Sparrow will come up.

I am struggling to identify what further action PO can take in relation to options, that does

not include a material risk of either further substantial costs, or continued adverse publicity, for what I suspect will be limited benefit to applicants or that will give rise to a different outcome. Clearly the Minister is entitled to call for some kind of public enquiry at government cost but again, she would need to be certain that this will produce a different outcome from that already available to applicants.

I'm happy to discuss this over the weekend (on my mobile [GRO] or on my home no ([GRO])) or first thing on Monday.

Kind regards,

Jane

<image001.png>

Jane MacLeod

General Counsel

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Mobile number: [GRO]

<January Options - v7- clean.docx>