

Message

**From:** Ben Beabey [Ben.Beabey@GRO]  
**Sent:** 17/05/2019 08:26:10  
**To:** Bayliss, Larissa [/O=WWH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Bayliss Larissa924]  
**CC:** Ben Beabey [Ben.Beabey@GRO]  
**Subject:** FW: INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share

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Larissa

Please let me know when you are in the office and I will call you about this - it needs urgent action from you/your firm -- but it is a straight forward question for now that needs answering from the Northern Irish lawyers-- let's speak before you do anything.

Ben



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**From:** Ben Beabey  
**Sent:** 17 May 2019 08:51  
**To:** Alison Bolsover <alison.bolsover@GRO>; Julie Thomas <julie.thomas@GRO>; Ben Beabey <Ben.Beabey@GRO>  
**Cc:** Rodric Williams <rodric.williams@GRO>; Harris, Josh <jharris@GRO>; Dawn Wall <dawn.wall@GRO>; Michelle Stevens <michelle.stevens@GRO>; Bayliss, Larissa <lbyliss@GRO>  
**Subject:** RE: INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share

Thanks Alison

Josh is away and I have cc'd his colleague Larissa here to ensure we are put into the hands of whoever Josh has left this matter with at DACBeachcroft in his absence.

Meanwhile, you make a good point about these figures provided to us and how Mrs McCartan's interest in the property/divorce from Mr McCartan can impact on that potential recovery. Whatever we recover, we don't then want

to get drawn into any divorce dispute and also we need to know, as Alison asks, that the figures provided to us as what will be recovered are unaffected by any claim from Mrs McCartan to equity in the property of her own.

**LARISSA** – you have local Northern Irish agents advising - please can you first check with them that you can share this email chain with them confidentially and under legal privilege so it is not disclosable, say, to Mr McCartan and, if so, then you can share this email chain with them; in particular raising the query from Alison and we need clarity from them urgently on that please this morning; let’s see how they answer that by email and if Alison requires a conference call with them (and me) you can set that up. Please action this right away.

Thanks

Ben



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**From:** Alison Bolsover  
**Sent:** 17 May 2019 08:06  
**To:** Julie Thomas <julie.thomas@**GRO**>; Ben Beabey <Ben.Beabey@**GRO**>  
**Cc:** Rodric Williams <rodric.williams@**GRO**>; Harris, Josh <jharris@**GRO**>; Ben Beabey <Ben.Beabey@**GRO**>; Dawn Wall <dawn.wall@**GRO**>; Michelle Stevens <michelle.stevens@**GRO**>  
**Subject:** Re: INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share

Ben /Josh

I would like to seek clarity on the case this morning, is the offer for the £53k, if this is the full equity available on the property Mrs McCartan be due to half of the proceeds from sale and therefore the monies available be reduced or have we been offered the full equity available and may be challenged further on this at a later stage. Mr McCartan did imply in his email that his ex wife would seek to claim 50% of the equity.

If the offer is the full £53k then I would be happy to proceed and take the advice given and accept as a part payment clearing the interest element first to enable us to secure against further action and not impede the imminent sale.

If you can confirm the above I am happy to have a quick call if required today as I am on leave after today. I will review the hard copy case this morning but I am happy to proceed as stated once the above is clarified.

Kind regards Alison

**GRO**

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From: Ben Beabey  
Sent: Thursday, 16 May, 16:32  
Subject: RE: INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share  
To: Julie Thomas, Alison Bolsover  
Cc: Rodric Williams, Harris, Josh, Ben Beabey

legal privilege/confidential/do not share

Thanks for such a quick response Julie;

· Noted, Julie, your agreement in principle to the sale proceeding on that basis provided the Agent Debt Team are content with the sums calculated to be recovered from any sale now and the fact that thereafter, the likelihood of recovery of the balance of accrued interest may be slim as it will not be secured. Let me know if I have misunderstood.

· Please note, as I understand it, the former PMR no longer lives at the property; it is his ex-wife looking to sell the property (she owns it jointly with him) and so all of this may come out of the blue to the former PMR himself – see below Rod and my desire to mitigate any fall out about that from the former PMR himself when he learns about it (he will have to agree to the sale) by ensuring ( in advance) there is direct contact about the proposed sale between POL's local lawyers and the former PMR alerting him to what is proposed.

· I think the process with the property sale would secure the equity which is available coming to POL directly without the risk of it being dissipated – it is just that we are not recovering the loss and full interest – it is anticipated however POL would recover the original loss plus some interest – I am cc'ing our solicitor Josh who will correct me if I am wrong about that.

· Yes, my understanding is the Agent Debt Team have been involved all along alongside the local POL solicitors in Northern Ireland, because the matter came into Rod like this (although, for reasons below – the ultimate financial decision isn't actually one for Rod); Jenny Smith had said this last month to our solicitors:

*Good Morning Josh,  
I have spoken to Dawn and she has asked if you would liaise with Rodric regarding this case to see if the business is agreeable to release security given we will not receive the full funds relating to the claim.  
Thank you  
Jenny*

· So, by this, as requested, I'm copying both Alison and our solicitors handling the case, Josh.

· Please also note the advice (I have highlighted in yellow right at the end of this chain below) from our WBD Group Action lawyers that in accepting a sum to discharge the Charge now which is less than the combined total of debt plus all interest, POL is advised **not to** treat that as a full and final settlement of the debt as a whole (in case the balance left owing is useful in negotiation should this former PMR join in the Group Litigation). That said, and whilst Rod agrees with that advice, Rod was also concerned in our dealings with the former PMR not to appear overly aggressive if we can avoid that (without weakening the legal position) on the balance of interest still owing after a property sale – see my comments below to Josh about the need for POL's lawyers to write directly to the former PMR about what is proposed and how to position that to avoid him alleging POL is trying to secure a sale "behind his back" by dealing with the joint owner, his ex-wife. I am told this transaction cannot be done behind his back anyway, because even if we agree terms of repayment, the sale contract and redemption statements will all have to go to the former PMR for his formal agreement – but it is the perception Rod is keen to avoid.

· I will assume, unless Julie says otherwise, that it is agreed not to accept the property proceeds, if this sale goes ahead, in full and final settlement in line with the WBD advice.

Alison/Josh

· **Alison** - Please see below from Julie; that she agrees that the recovery available from a property sale at this time is sensible – subject to Agent Debt being comfortable on the recovery financial figures. Legal see no reason to object to that. I presume you can get more up to date figures if thought necessary through Josh and otherwise pick the financials up with Julie if you need to - the figures provided below in my email come from the last figures provided to me from Josh.

· **Josh** – I have flagged below (see paras in yellow) that once you have agreement and instructions from Alison to what is proposed by way of financial recovery; if this property sale is to proceed; then (1) there must be some advance and direct explanatory contact between POL, through POL's Northern Irish solicitors, and the Former PMR and (2) see the advice from Bond Dickinson that this transaction should not amount to a full and final settlement – again, Alison to confirm.

· **Josh** - On the question of POL's local solicitors writing to the former PMR – Rod and I think it very important that the first he (the former PMR) hears of the intended property transaction (assuming Angela gives it the green light) is not by receiving a letter from his ex-wife's lawyers with a draft sale contract showing him what will be paid to POL from the proceeds; this will appear as if POL is trying to push a sale through "behind his back"; we think that POL's local lawyers should agree with the ex-wife's solicitors that a letter is sent by POL's local lawyers to the former PMR **ahead** of him receiving any sale contract / redemption figures from his ex-wife and POL should be showing what might be paid out to POL etc. The terms of that letter need to be very neutral in tone and reporting what is proposed financially; explaining how the proceeds will be split and what is coming to POL to release the Charge to allow the sale to proceed in terms of his debt to POL; there is then a question whether or not POL would have to raise in that sort of letter what POL's formal position is about the balance of interest debt left over ? - and on that, please can you get some advice from POL's local Northern Irish lawyers whether or we'd have to explicitly say to the Former PMR if this is or is not a full and final deal to preserve POL's position on the balance of the debt for the future – perhaps they could draft up what such a letter from them to the Former PMR would look like and we can consider it with Julie at that stage?

Next steps: - Alison to confirm she is content with the level of recovery (update figures as necessary through Josh) anticipated; Alison to confirm this will not be in full and final settlement; Josh to ensure POL's local lawyers advise the former PMR about the proposed transaction *before* he hears about it from his ex-wife's lawyers and POL to approve the terms of that letter in advance with local advice whether or not such a letter has to flag up the POL position on full and final settlement/balance of interest still owing.

· Finally for Josh to consider with the local Northern Irish lawyers (assuming things get this far): Womble Bond Dickinson have also advised that : *Finally, if you (POL) receive only part payment, it should be allocated first against all of the interest which has accrued to date. This is to leave the principal judgment debt (or part of it) outstanding, so that it continues to accrue interest (whereas any unpaid interest will not itself accrue further interest).*

There's quite a lot in this, so very happy to speak as necessary – otherwise, over to Alison and Josh for next steps.

Thanks

Ben

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**From:** Julie Thomas

**Sent:** 16 May 2019 15:11

**To:** Ben Beabey <Ben.Beabey@GRO>

**Cc:** Rodric Williams <rodric.williams@GRO>

**Subject:** RE: INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share

Many thanks for this Ben.

It is not clear from the below if the Agents Debt team have been involved to give the required assurances? If possible, a copy of this to be sent to Alison Bolsover to give the necessary confirmation.

With that in place, the approach to allow the former agent to sell the property to release equity and repay the debt seems sensible. However, we are likely to face a second issue of pursuing the debt as I imagine we'll have no further influence over this once the charge is released?

Thanks,

J



Julie Thomas

Operations Director

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**GRO**

**From:** Ben Beabey <Ben.Beabey@postoffice.co.uk> **GRO**  
**Sent:** 16 May 2019 12:36  
**To:** Julie Thomas <julie.thomas@postoffice.co.uk> **GRO**  
**Cc:** Rodric Williams <rodric.williams@postoffice.co.uk> **GRO**; Ben Beabey <Ben.Beabey@postoffice.co.uk> **GRO**  
**Subject:** INSTRUCTIONS NEEDED: AGENT DEBT MATTER: Mr Damian McCartan and BALLYNAFEIGH (revised 15/5/19) - legal privilege/confidential/do not share

legal privilege/confidential/do not share

Dear Julie

A matter on which your instructions are needed and Rod has asked me to pass the email below on to you; it sets out some Horizon background which really you ought to be aware of in the context of a proposed property sale in Northern Ireland and discharge of a Legal Charge in POL's favour registered against a Former PMR loss debt, with a balance of interest still owing thereafter.

Perhaps best if you can review my executive summary email to Rod immediately below and the more detailed email note below that – as combined that has extracted all the pertinent information for you in one place (although I do attach the PDFs of the POL files). The issues for your consideration are in the emails below.

**There is some urgency** – as the proposed property sale is on hold (and has been for some time) pending the local POL lawyers being able to confirm to the seller (the PMR'S ex-wife) that POL is agreeable to the Charge being removed from the property on the payment terms set out below.

The case is one of an original 2013 agent loss of c£45k; potential recovery from the property sale now of c£53k against an overall debt plus interest total of c£69. The extra reason to draw this to your attention is set out below just so that you have an awareness – ie - historic references on POL's file to certain Horizon issues which may or may not resurface from the former PMR – but nonetheless a decision is still required from POL on agreeing to the property sale proceeding.

Let me know should you wish to discuss, but the emails below extract all the relevant information and I await your instructions.

Thank you.

Regards

Ben

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**From:** Ben Beabey

**Sent:** 15 May 2019 11:50

**To:** Rodric Williams <rodric.williams@GRO>

**Cc:** Ben Beabey <Ben.Beabey@GRO>

**Subject:** Mr Damian McCartan and BALLYNAFEIGH FINAL VERSION FOR ROD (revised 15/5/19) - legal privilege/confidential/do not share

Rod

Below is the final draft email briefing note – you thought possibly involving Ben F or you may think it is a decision for Julie – in any event, instructions are needed ASAP to pass back to DAC Beachcroft who can then (a) update the POL Debt Team to make a decision and in turn (b) Instruct local solicitors in Northern Ireland.

The time pressure is that the sale of the property is pending (for some time) and the risk is continuing delay by POL causes the sale to fall through.

You might want to add this as an executive summary of the legal advice set out in my longer email below:

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Local Northern Irish solicitors, the WBD Group litigation team and POL Legal all agree that, legally, POL can consent to release the Legal Charge in favour of POL and permit the sale of this property and there is a commercial benefit to POL in doing so (**provided** the Agent Debt Team are content with the financial recovery available from the equity). The property cannot be sold without POL agreeing to release its Legal Charge – there is a buyer waiting to know this decision (for some time) and so there is urgency to avoid the sale falling

through. Before consenting, however, it is important that POL is aware of background “Horizon issues” found on POL’s case file; those file references do **not** create any legal reason not to proceed with the property sale. The former PMR is **not** a Group Action claimant. There were previous offers, including last year, from the Former PMR to repay at £30/40 a week but this was, it seems, not taken up by POL. This is not a case of POL seeking to impose a sale of the property. Despite references from the former PMR to what might happen to his ex-wife and children if there is no equity left (see below), we understand it is the former PMR’s ex-wife (joint owner of the property with the former PMR) who is now seeking the sale of the property possibly within her divorce from the former PMR. The current loss plus all accrued interest is c£69k. The sale is likely to recover for POL the original loss debt (c£45k) plus some accrued interest (c£8k) if the Legal Charge over the property is released by POL. There will be a balance of debt left unsecured thereafter. The potential equity and recovery due to POL on sale should be re-checked by the POL Agent Debt Team with the local solicitors in Northern Ireland. The balance left owing to POL should **not** be written off in full and final settlement because there is a risk this former PMR *may* join the Group Litigation and that balance could still be used to off-set any such future claim. The perceived risk of a future claim from this former PMR derives from historic references on the POL file (detailed below); the file includes references to an *unresolved Horizon issue* mentioned by the PMR at the end of a formal interview. It is not clear from the file the extent to which any such case-specific Horizon issues were then ever investigated by POL at the time (2013/2015). WBD advise that these references to Horizon do **not** trigger any obligation on POL to notify Freeths nor any obligation on POL to raise the issue with the former PMR. The property sale and distribution of the equity may itself cause the former PMR to revisit historic claims around this loss and Horizon, but that remains to be seen; indeed if POL frustrates the sale now, that too could prompt the same questions/complaints.

Let me know if you need more/to discuss.

Ben

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legal privilege/confidential/do not share

Dear xxxx

This matter requires instructions.

1. **The instructions required.**

- Northern Irish branch: Ballynafeigh 168704 - former PMR Peter Damian McCartan.
  - POL's charging order over his property (which is owned in joint names with his ex-wife) at GRO GRO in respect of a branch loss from 2013
  - This former PMR is **not** a Group Litigation claimant.
  - His ex-wife now wants to sell the property which is held in joint names between her and the PMR; this requires POL's consent to remove the charging order before the sale can proceed.
- There is not sufficient equity to pay off the full debt including all accrued interest.
- We are advised that there is sufficient equity from the proposed property sale to pay off the original loss (c£45k) plus approx £8k interest.

2. **Factual background based on file documentation extracted from POL's Agent Debt team by DAC Breachcroft – and “the Horizon” references**

- The former PMR, Mr McCartan was in post from 18.04.2002 until 03.01.2013 when he was suspended due to an audit on that date indicating branch accounting deficiencies of £45,555 We have asked the Agent Debt team to confirm when his contract was terminated; although the FAD file refers to how in February 2013, “*he has submitted a resignation to avoid the termination of his contract*” which we therefore presume was the outcome.
- POL's Agent Debt team engaged in correspondence with the PMR seeking repayment by demand letters in 2013 and then again in 2015. A copy of Agent Debt's case file is attached.
- A report from the audit visit in 2013 notes that when asked about the loss amount, the PMR said problems with accounting arose when “*the new pinpads went in and they were telling him to pay out double and he wasn't clearing his Horizon screen and settling the screen after every transaction and he later said he had underpaid a customer by £1000*”.
- On 9 June 2015, a report was sent from Simon Hutchinson of POL Security to Dawn Colclough, Helen Dickinson and Michelle Stevens headed “Case Closure Ballynafeigh”. This report recounted that:
  - The PMR was interviewed under caution on 18.01.2013 and that the PMR “*denied theft, however he admitted inflating the cash figures to disguise the loss as he was fearful of losing his job*” it also notes that the PMR “*claims the losses were caused when the new pinpads were installed and he had not followed the POCA ‘withdrawal limit’ process correctly*”; it also notes that the PMR “*admitted it was deceitful to disguise the loss*”.
  - There was a second interview under caution on 22/11/2013 with the PMR accompanied by his NFSP representative. This report records that: “*At the termination of this final interview and after the tape recording has been switched off, Damian McCartan asked his NFSP representative **if he should mention Horizon now, and was advised not to***”.
  - POL delayed putting any prosecution file to the Public Prosecution Service “*pending a report from specialists to address the Horizon issues and as the Horizon issue remains unresolved, and it may be a further six to nine months before a specialist report will be available, the time period involved in this may well become a matter of adverse comment in relation to Mr McCartan's human rights. The Post Office Northern Ireland Legal representative is in no doubt that Damian McCartan's defence team will raise an issue in that regard*”.

- That “*Damian McCartan’s unresolved Horizon issue was not identified, nor did it go to mediation, but I believe we can surmise that he was going to blame Horizon on the identified loss*”. The report goes on to refer to potential Human Rights arguments around delays in bringing criminal cases to court.

- This 2015 report was in response to an email from Dawn Colclough to Simon Hutchinson of 09.06.2015 in which she has said that *....”I have received the case closure for Ballynafeigh and I will now need to pursue Mr McCartan for repayment of the debt. Are there any issues I need to be aware of in advance of this? What is the unresolved Horizon issue as I was not aware this case was in the mediation scheme? The report also refers to Human Rights issues, can you please expand on the details”*.

- On 28/07/15 POL confirmed to Mr McCartan that the security investigation into his branch loss would be closed with no action to be taken; it advised him that he remained liable for the loss and that POL would be in touch with him about that.

### 3. The subsequent civil recovery activity

- DAC Beachcroft have confirmed that in due course local legal agents were instructed in Northern Ireland to pursue Mr McCartan for the branch losses as a debt by way of civil recovery; this legal action resulted in a Judgment debt order and a legal charge being placed over Mr McCartan’s property, GRO GRO in 2015.

- The file indicates that around 17.06.15 Mr McCartan promised weekly repayments of £30/40 – but no payments were forthcoming and civil proceedings against him were initiated.

- Mr McCartan did not actively engage with the civil procedure against him which led to the Charging Order over the property apart from attending one hearing in 2018 concerning his assets; the the Judgment was made against him with no appearance from him and the Charging Order was made with no objection from him.

- The FAD file indicates that in **May 2018**, there was a visit to the property by POL, telephone calls and a letter to Mr McCartan posted through the letter box asking him to make contact with POL with regard to the charge/debt was sent.

- On 11/06/18 Mr McCartan emailed POL in response to say this:

*Simon ke Ballynafeigh PO.*

*As I said in my call to you I was involved in 2 serious car crashes that left me unable to work as many hours as I wanted. However now I have recovered enough to increase my hours and should be able to pay the £40 per week at present and hopefully increase that when I am fully fit.*

*With regards to the house. The house is in joint names with my ex wife and as we had increased the mortgage to carry out repairs/improvements I don't believe there is a great amount of equity on it. Also as it is in joint names with my ex wife I'm sure if she does sell it she will be claiming at least 50% of any equity there may be.*

*If you need to contact me you can phone me at the number you have, email me at this email or send mail to my sister's house at GRO*

- On 18/07/18 Mr McCartan indicated that he was setting up a standing order to POL at £40 per week.

- On 22/07/18 Mr McCartan emailed FAD team to say this:

re Ballynateigh P.O..

Regarding the order attached to my former home at [GRO]

My ex wife has been in contact with me and has asked me to see if this order can be lifted.

She has stated that if she is unable to attain some equity from the house she and the children will have no accommodation and will have to go to a hostel or move in with her parents and will not have a stable or secure home.

As I have stated previously the reason I was unable to keep the arrangement I had come to was due to being in 2 serious accidents. I have now recovered enough to increase my hours and am now able to make these payments.

Damian

The FAD file indicates that Mr McCartan's ex-wife previously had a debt to POL (as she was postmaster before him) but "this has been paid".

By August 2018, POL is in touch with both Mr and Mrs McCartan concerning the pending sale of the property, with a file note that indicates that **Mrs** McCartan is "looking to see how best she can sell the house" and Mr McCartan was been told that "the charge will only be removed if the debt is paid off".

The original debt due to POL was £44,839.18. Together with costs, interest etc. the total sum now due to POL would amount to just over £69K.

However, as there will be a shortfall in the available equity on the property sale available to POL after other prior charges are also paid off and as POL will not be paid the total debt due (including costs & interest) in full, Ms McCartan's solicitors (it is his ex-wife who is pressing for a sale of the property) require POL's consent to proceed with the sale transaction.

We are advised that the amount which will be paid over to POL if the sale proceeds will be approximately £53K (the original debt + around £8K in interest). These figures should be checked by POL Agent Debt when making a final decision.

POL's local Northern Irish lawyers have stressed that if this amount is accepted from the property sale, this will not be in full and final settlement of the Judgment and the ability to recover the balance due will be available should POL wish to pursue Mr McCartan at a later date.

#### **4. Current contact with Mr McCartan about the proposed sale of the property and potential partial payment of the debt amount to POL**

There is no current engagement directly with Mr McCartan (who is unrepresented) about the prospect of the sale of the property and the consequential discharge of part of the debt from its proceeds.

POL's local solicitors in Northern Ireland are only corresponding with Mr McCartan's ex-wife and it is she who is looking to sell the property – this is acceptable procedurally, thus far, because the property is held in joint names (Mr McCartan and his ex-wife)

POL's local solicitors advise that with respect to Mr McCartan personally and whether or not ultimately Mr McCartan begins to object to any property sale: *"we'll soon find out. The solicitor for his ex-wife will be sending him a contract for sale which will include the discharge of charges on the property, including ours (POL's). If he objects, then the sale will fall through, but I don't see on what grounds he could object. He has consented to the sale to get us to this point, so if he were to turn around and say he has changed his mind then that's out of our hands. In summary, he has not challenged the court award and he has consented to the property sale so far and if he is to later object we'll only find out when he has the contract of sale. Our view would be that we should not prevent the sale going through and if he objects after seeing the contract, so be it. There's nothing we can change about that, but at least the collapse of the sale will be on him, not us."*

## 5. Instructions required

· Because the sale of the property cannot proceed without POL's consent; and that consent at this time would depend on POL agreeing to accept a sum from the sale proceeds less than the total due of the debt plus interest (ie accepting c£53k payment now as against an original debt of c£45k plus interest bringing the current total due to c£69k), POL has to decide:

- o Does it permit the property sale to go ahead and accept the lower amount of c£53k now from the sale proceeds which will pay off the original debt plus c£8k interest? That will leave the balance due as unsecured debt still owed by Mr McCartan; or
- o Does it refuse to permit the sale to go ahead unless the total debt and total interest (c£69k) is somehow to be repaid by Mr McCartan both from the property sale proceeds available to POL and/or from any other assets he may have.

## 6. Options and Horizon considerations

· The local Northern Irish POL lawyers recommend accepting the sum available now from the current proposed sale of the property even though that is less than the total of the debt plus all interest accrued; they put it like this: *In the circumstances I don't think we have any choice; the security over the property was always going to be the only way to get money out of this guy and if that's all that there is left then we might have to take what is there. To refuse would be to possibly frustrate the sale and then we're back to square one. ....and..... Because we will not be recovering our full £69k however they need our consent to release the security. Based on the above figures are we happy to consent? I would be happy to recommend that we do on the basis that we would be recovering the full sum due plus an additional £5 - £8k in interest which will offset the client's cost. I don't see the merit in objecting as it will simply disrupt the sale and we're then back to square one.*

· However, in proceeding (in any respect) POL must be alive to how in 2013 and again in 2015 both Mr McCartan and POL did have "Horizon issues" in mind; these Horizon arguments appear from the paperwork we have seen not to have been developed either by Mr McCartan in defending the claimed loss in the civil legal process that led to the charge or in any mediation with POL at the time of his suspension.

· The local Northern Irish POL lawyers have specifically confirmed to DAC Beachcroft that when pursuing Mr McCartan for the debt and in obtaining a Judgment against him and in registering that as a charge against his property, at no stage has Mr McCartan disputed the debt; he has not objected to or defended the civil recovery process; he has not raised any argument around Horizon.

· So far as the proposed sale of the property: POL does not know whether or not Mr McCartan would now object to payment being made from the property sale proceeds to POL in order to remove the charge and to allow the property sale to proceed because there is no dialogue between POL's local lawyers and Mr McCartan on that topic; only between POL's lawyers and Mrs McCartan as the joint owner of the property.

· If POL agrees to the proposed partial repayment from the proposed sale proceeds; then Mr McCartan will become aware of the terms of repayment and discharge of the POL Charge from the sale proceeds because he (Mr McCartan) will have to sign a contract for sale which will set out the charges to be paid from the proceeds of sale and that will be sent to him by his ex-wife solicitors. That could be a prompt for Mr McCartan at that point to raise arguments about any unfairness from the original debt process/Horizon arguments and begin to challenge the Charge afresh by reason of his refusal to sign the property sale contract.

· POL must also recognise that there is a legal risk that in due course, particularly when the Horizon trial is ongoing, that Mr McCartan may then revisit his own suspension and the basis on which POL has secured this debt recovery and questions around his own use of Horizon from 2013. An adverse outcome of the Horizon trial against POL is likely to increase that risk although the merits of any such future claim from Mr

McCartan cannot now reasonably be assessed without second guessing his potential complaint and investigating unilaterally whatever more detailed analysis might be available.

- If the business is minded to accept a payment now from the property sale, then:
  - o It can accept the most equity from the proposed property sale as is available to POL (that should cover the original loss debt plus c£8k interest which should pay off POL's own legals costs in having pursued this matter to date);
  - o It will mean the charge in POL's favour on the property is to be discharged;
  - o It can complete the above in a manner which nonetheless preserve's POL's right to pursue Mr McCartan personally for the balance of the sums due in unpaid interest;
  - o However....the above steps should only be taken in the full understanding that there is an uncertain legal risk that, in the future, Mr McCartan may seek to rely on historic Horizon issues to open up the original losses and debt recovery and to look to recover from POL whatever sums are now to be paid out to POL to discharge this charge on his property sale.

These issues may be opened up by Mr McCartan sooner at the point when Mrs McCartan's solicitors send Mr McCartan a copy of the sale contract which will clearly indicate how the sale proceeds will include repayment of the original debt plus some interest to POL.

- o If Mr McCartan does open up those Horizon arguments afresh, then it will become apparent that both he and POL were aware of some disputed issues around Horizon being raised or potentially to be raised by Mr McCartan, albeit it (based on what we have seen) in a limited way, in 2013 when he was under investigation by POL for the loss.

· Alternatively, the business can refuse to accept part payment of the total debt and all interest accrued which in turn will necessarily frustrate the sale (assuming Mr McCartan has no assets elsewhere to pay off all the accrued interest from his own funds) and POL will receive nothing by way of payment now and will have await any future sale and consider the financial position at that stage. Blocking the sale could of course itself prompt Mr McCartan to raise the past issues about Horizon or any other complaints which he may have – indeed it might be more likely to do so than POL agreeing to the sale.

· If POL is content for the sale to proceed on this basis, it is recommended for POL's Northern Irish lawyers to write to Mr McCartan to alert him to that proposed course alongside Mrs McCartan's solicitors providing him with a contract for sale which he is to sign as joint owner of the property; that way there is at least some direct correspondence between POL and its former PMR in respect of the debt and the proposed property sale;

Finally, if POL does agree to allow the sale to proceed, the advice of our external solicitors dealing with the group action is that POL should **not** accept any part payment which it receives in full and final settlement of the underlying judgment debt. This is because by retaining the right to the unpaid part of the judgment, POL will retain the possibility offsetting it against any other sums we might be ordered to pay to Mr McCartan in the future. This might include any sums POL is ordered to pay him if he joins the group action (which although unlikely, is possible – for example if he issued a claim against POL alleging Horizon issues, that claim would be joined to the group action).

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