

From: Andrew Parsons <[REDACTED] GRO>
To: Jane MacLeod <[REDACTED] GRO>, Rodric Williams
Cc: Mark R Davies <[REDACTED] GRO>, Patrick Bourke
[REDACTED] GRO, Ben Foat <[REDACTED] GRO>
Subject: RE: Litigation and Appointment - next steps - STRICTLY CONFIDENTIAL [BD-4A.FID26896945]
Date: Tue, 24 Apr 2018 18:29:13 +0000
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Inline-Images: image001.png; image002.png; image003.png; imagef601bd.PNG; imageb4b866.PNG; image65eb62.PNG

Jane

A few comments below from me – embedded alongside yours below in red.

Kind regards

Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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From: Jane MacLeod [mailto:[REDACTED] GRO]
Sent: 24 April 2018 17:48
To: Andrew Parsons; Rodric Williams
Cc: Mark R Davies; Patrick Bourke; Ben Foat
Subject: FW: Litigation and Appointment - next steps - STRICTLY CONFIDENTIAL

All

As most of you are aware, we have the briefing for Tom Cooper tomorrow on the Postmaster Litigation. This is being provided in his capacity as a director – and therefore as a member of the Board sub-

committee. However it appears that he is also bringing Stephen Clarke who is one of the team at UKGI. Stephen is not subject (yet) to any duties/obligations. Richard Callard is also likely to attend. Richard is no longer a director, however I don't expect that we will say anything that Richard hasn't previously heard (whatever the capacity in which he heard it!)

Tomorrow's briefing

Tom has been appointed as a director, but we have not yet agreed his letter of appointment, so my view is that the default position is that he owes the normal duties of a director to POL. This puts him personally in a difficult position, as his ability to brief UKGI/BEIS is therefore unclear, and we have not yet agreed:

The litigation protocol which is designed to protect confidentiality and privilege;

The framework agreement between POL and UKGI which should set out the operating relationship between the two organisations – including confidentiality obligations, and

Tom's appointment letter, as he has requested that it references the confidentiality obligations set out in the framework agreement, rather than having duties specific to him.

So, any 'document' that we wish to provide Tom/Stephen tomorrow must be marked to show that it is:

The property of POL

Private and confidential; and

If relevant – subject to legal privilege and therefore not to be copied, emailed or otherwise shared by the recipient.

Litigation protocol

My comments on the revised protocol are set out below (and the paragraph number refer to their marked up version attached). Please let me know asap whether you have any comments?

Recitals A-E and elsewhere: Changes to 'Secretary of State' from BEIS – OK

Para 1 – I would prefer that this was structured 'they shall not ... except in compliance with ...', rather than saying "there will be no limitation ... subject to ..." but suspect we can probably live with their wording?

Para 3 – "Comprehensive" updates is a high standard – could we add "on matters discussed at the sub-committee" so to give it some restriction?

Para 5: - this whole paragraph is new. Previously we stated that we would offer a briefing to UKGI Legal after any Board Sub-committee update. We can probably live with the spirit of this new paragraph provided that:

- The obligation to notify is 'promptly' not 'immediately' (note that they have used 'promptly' in para 1.6.2 of Appendix B instead of 'immediately')
- We only notify developments/potential press coverage etc that are material

- They should not have the right to require changes to the Board committee meeting dates
- I am very reluctant to agree to ad hoc reporting over and above that which goes to the Board/Committee, or which is required under (new) 6. If they insist, then we will keep it under review and if we feel it is excessive, we will 'complain' and, at a minimum, suggest they pay for it.

Para 6 – In practice we have always done this, so it's difficult to say no, however my challenge would be where the ad hoc queries come from – otherwise we could be required to respond to anything! **Also, POL should not be required to provide privileged information if it is intended to be used for public dissemination.**

Para 8 – obligation on us to mark information as 'confidential/subject to privilege' – I think we should do this anyway. **I wouldn't agree to this. Something will slip through that is not marked "CONFIDENTIAL" and UKGI will then be free to disclose it. Better that we assume everything is confidential unless POL says otherwise.** I am more concerned about a blanket agreement to provide them privileged information without looking at it on a case by case basis. **Also, this only refers to UKGI complying with Appendix B – it should also refer to the Secretary of State.**

Timetable – need to update this as its already changed (and parts of it are completed in any event)

Appendix B

- 1.1 'directly' – disagree as I'm not sure what information to be supplied under the protocol (which is all about the litigation in any event!) would relate 'directly' as compared to 'indirectly'.
- 1.2/1.3.2 – are these now circular? Suggest we repeat the 'common purpose' from Recital C? **Agreed**
- 1.3.5 – includes 'professional advisers' whereas 1.6.1 has not included that wording – I think this is their error.
- 1.5 – 'outside of their respective organisations' – disagree. The obligation under clause 1.3 should be: '... are aware of the relevant obligations under clause 1.3 of this agreement not to .. disclose any Confidential Information ... except in accordance with this agreement.'
- 1.7.5 – 'legally' means we end up having an argument as to what this means. NDAs often phrase this along the lines that the information is acquired in circumstances that do not constitute a breach of the obligations of confidentiality ...
- 1.7.6 – all probably ok? **No – this needs to be limited in respect of privileged material. I would add at the beginning of this para "Save where the information is privileged". This also applies to 1.7.7. Note – it doesn't apply to 1.7.1 – 1.7.5 as in those scenarios privilege will have already been lost.**
- 1.8/1.[6] (should be 1.9) – clause references have gone awry
- [1.7]/1.9(a) – should inform us 'promptly' of receipt (as otherwise we can't comply with time limits in (b))
- [1.8]/1.10 – I don't like 'have regard to' but suspect that we can't object to this?

Many thanks,

Jane



Jane MacLeod

Group Director of Legal, Risk & Governance

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Mobile number: **GRO**

From: Lambert, Helen - UKGI [mailto:**GRO**]
Sent: 19 April 2018 17:07
To: Rodric Williams <**GRO**>; Jane MacLeod <**GRO**>
Cc: O'Neill, Elizabeth - UKGI <**GRO**>; Callard, Richard - UKGI <**GRO**>; Cooper, Tom - UKGI <**GRO**>; Clarke, Stephen - UKGI <**GRO**>
Subject: FW: Litigation and Appointment - next steps - STRICTLY CONFIDENTIAL

Rodric, Jane

Thank you for your draft protocol, a revised draft is attached.

As you indicate below, the case is being proactively managed by the Sir Peter Fraser and as such the timetable is liable to change dramatically. Because of this, we were somewhat uncomfortable with the fact that there would be over two months between dates on which BEIS/UKGI would receive a formal update. To alleviate this, we have suggested a provision that allows BEIS/UKGI to be informed of any material change in the timetable.

We have also clarified somewhat the information which can be disclosed to BEIS/UKGI by Tom Cooper, to ensure that his role on the Board and Sub-committee can be properly utilised, as well as suggesting measures to allow for more expedient sharing of privileged information. We would consider that assessing this information on a case-by-case basis would be disproportionate in the context of the relationship between BEIS, UKGI and POL.

Finally we have requested that legal counsel is provided with written updates to ensure that BEIS/UKGI is able to keep a strong and accurate audit trail in respect of its oversight of the litigation.

We trust that the wording in this protocol assists with your concerns in respect of disclosure of legally privileged information more widely.

We would be happy to discuss these points with you in person or over the phone.

Separately, we have noted that Tom Cooper has been appointed to the board. We assume that you are therefore content with the proposed appointment attached (which I sent to you on 23 March 2018). Is it possible to arrange for this appointment letter to be issued?

Kind regards

Helen

Helen Lambert | Legal Seconded

UK Government Investments

1 Victoria Street | London | SW1H 0ET



From: Rodric Williams [<mailto:>]

Sent: 27 March 2018 18:44

To: O'Neill, Elizabeth - UKGI [GRO]; Patrick Bourke

[GRO]
Cc: Jane MacLeod [GRO]; Callard, Richard - UKGI

[GRO]; Cooper, Tom - UKGI [GRO]; Lambert, Helen - UKGI [GRO]

Subject: RE: Litigation and Appointment - next steps - STRICTLY CONFIDENTIAL

Elizabeth,

Thank you for sending through your draft protocol identifying the touchpoints in the Post Office Group Litigation on which you would like visibility.

Your touchpoints overlap substantially the matters on which we will be reporting to our Board of Directors as part of our governance for managing the litigation and its risks. That governance includes the establishment of a Board Subcommittee to receive legal advice on Post Office's defence as the litigation proceeds. Tom Cooper, BEIS/UKGI's shareholder representative on the Board, is a member of the Litigation Subcommittee, which will meet shortly before full Board meetings so as to provide the full Board with contemporaneous, focussed updates.

In addition to the updates BEIS/UKGI will receive through its Board and Litigation Subcommittee representation, we are also happy to provide updates on the litigation to BEIS/UKGI's legal advisors. These should be done in-person or via telephone conference call, immediately following the full Board meetings to ensure continuity and consistency of reporting.

The above approach is reflected in the attached revised protocol, which is designed to protect Post Office's claims to legal professional privilege and attaches as appendices:

- a reporting timetable prepared around key stages in the litigation and our Board's calendar; and
- the obligations which will accompany the disclosure of confidential information.

Please note that the litigation timetable is very likely to change in response to the proactive case management being applied by the Managing Judge Sir Peter Fraser. It is also likely to change as the parties respond to developments in the litigation itself. We do not however propose to make any changes to scheduled update meetings unless they require Post Office to consider materially changing its approach to the litigation.

We look forward to receiving your comments on our draft. I am very happy to discuss those in person or over the telephone if you would find that easiest.

With kind regards, Rodric



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T:

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GRO

From: O'Neill, Elizabeth - UKGI [mailto: **GRO**]
Sent: 01 March 2018 15:51
To: Patrick Bourke < **GRO** >
Cc: Jane MacLeod < **GRO** >; Rodric Williams
 < **GRO** >; Callard, Richard - UKGI < **GRO** >; Cooper,
 Tom - UKGI < **GRO** >; Lambert, Helen - UKGI < **GRO** >
Subject: Litigation and Appointment - next steps

Patrick, Helen,

Thank you for your time last week.

As discussed, I attach a standard form litigation protocol along the lines of what we would propose to submit to the Permanent Secretary. As you will see, this sets out various touchpoints in the litigation process, and the steps we intend to take to ensure the Permanent Secretary remains fully informed at each salient point.

If you are able to provide more detail on the litigation timetable, or indeed if you have any comments or suggestions, we would be happy to amend the protocol bespoke to the current litigation.

Separately I'd be grateful, as I indicated in my email to Helen on Monday, if in anticipation of Tom Cooper's appointment, you could let me know if you intend to agree an NDA similar to the one you have with Richard, and if so, forward me the proposed text so that Tom and I may consider.

Kind regards,

Elizabeth

From: Patrick Bourke [[mailto:](#) GRO]
Sent: 23 February 2018 15:10
To: O'Neill, Elizabeth - UKGI <GRO>
Cc: Jane MacLeod <GRO>; Rodric Williams
<GRO>; Callard, Richard - UKGI <GRO>
Subject: Litigation Meeting

Dear Elizabeth

It was a pleasure to meet with you this morning.

I just wanted to confirm that we have understood the need for an appropriately structured information flow in relation to the matters we discussed earlier, and agree that some form of protocol to govern those arrangements makes very good sense.

While recognising that there is no set format in this regard, it would nonetheless be helpful for us to draw inspiration from similar arrangements you have put in place with other ALBs. You kindly offered to share something with us for that purpose.

We will come back to you with our take on how this might work best in our case, having regard to the particularities of our governance arrangements and the litigation itself.

In the meantime, do please feel free to get in touch if there is anything you'd like to discuss.

Kind regards

Patrick



**2017 Winner of the
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GRO

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