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**From:** Rodric Williams[/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=RODRIC WILLIAMSE9C114F4-B03F-4595-B082-CE89BE5C79D47B]  
**Sent:** Thur 01/11/2012 12:34:31 PM (UTC)  
**To:** Hugh Fleming; GRO  
**Subject:** Horizon Immunity Proposals - DRAFT COVER EMAIL

**Hugh – starter for ten covering email**

All,

**Status**

We have given lots of thought to JFSA's "Immunity Agreement Proposal" ("JFSA Proposal" - attached)

The JFSA Proposal:

- tries to establish a system where SPMRs can raise Horizon concerns without fear of reprisal;
- refers to a "detailed investigation", but gives no details, e.g. who will investigate, what the scope or outcome of the investigation should be, or who will pay;
- seems to be a way to channel complaints to the Second Sight investigation already underway (ref – Martin Edwards email of 05.10.12)

Our draft response ("POL Proposal" - attached):

- addresses JFSAs concerns on reprisals;
- establishes a no blame "Inquiry" to be carried out by Second Sight;
- would determine whether Horizon is fit for purpose, but would not rule on individual cases.

**Options:**

1. Do nothing – JFSA can solicit and pursue concerns as it sees fit, and POL can respond accordingly. Optically, this may not be palatable;
2. Put the POL Proposal to JFSA – this is however just another non-binding inquiry;
3. Mediate with JFSA – ideally to a resolution, but if not at least to agree a process for resolution. This may just add further time and cost with no guarantee of a successful outcome.

**Discussion Points**

Hugh's take is "do we need to offer the Inquiry"? The POL Proposal reflects what we anticipate JFSA wants, and may be more than it asked for. If anyone thinks JFSA wants something else, let us know as we might be able to back out and leave SPMRs to raise concerns directly with JFSA.

If we do go down the Inquiry route:

- it would determine whether Horizon is "fit for purpose", by reference to comparable systems;
- it would not "rule" on individual cases because of the very wider range of concern which could be submitted (e.g. inadequate training, inadequate support, user error, third party intervention, Horizon itself).
- cases will be chosen by Second Sight/JFSA/SPMRs, not POL – this helps neutralises any suggestion that POL "cherry picked" cases or that the process is a "whitewash". POL can still advance its case on the investigated concerns.

The risk with the Inquiry is that the “no blame” framework is likely to require POL to give immunity against civil (cp. criminal) action for any concern raised, i.e. POL should be able to pursue cases of criminal fraud, but might have to give up any civil debt recovery action.

Mediation cannot resolve every individual concern with Horizon. However, it is a confidential process which encourages free and frank discussion which a skilled mediator uses to test positions and expectations, and explore consensual solutions (including non-legal solutions). If we cannot agree a hybrid JFSA/POL Proposal with JFSA, mediation could be used to reach an agreed Proposal.

We look forward to discussing the options on Wednesday, but are happy to discuss anything in the meantime.

Rodric Williams | Litigation Lawyer

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