POL00006545

Message

From: martin smith [GRO]
on behalf of martin smith [GRO]
Sent: 7/11/2013 8:45:50 AM
To: Rodric Williams [GRO]; Simon Clarke [GRO]
CC: Hugh Flemington [GRO]; Susan Crichton [GRO]; Jarnail A Singh [GRO]
Subject: The report of Helen Rose.

Rodric.

Privilege.
LPP attaches to communications in connection with, in contemplation of, and for the purposes of adversarial proceedings. I guess here you suggest that such privilege attaches by reason of POL's contemplation of adversarial proceedings involving Fujitsu. Certainly in the civil world that must be right.

However in criminal litigation the emphasis is on ensuring that a defendant is not prejudiced by the absence of material which would otherwise assist him or undermine the case against him. Accordingly criminal disclosure law trumps civil privilege, but only in circumstances where the material in question meets the test for disclosure (undermines/assists).

Thus there are only a limited number of ways in which we can prevent disclosure of material which we would otherwise be required to disclose to defendants:

1. Seek a Public Immunity Certificate from the trial judge as we did in Samra. To achieve this we would need to demonstrate a real public interest in non-disclosure – see paragraph 14 of my advice on the topic in Samra.

2. Terminate the prosecution.

Why is Helen Rose's Report disclosable
In terms of analysing Helen Rose's report I consider there to be a number or issues:

1. On 30/1/2013 GJ tells HR that:
   "It isn't clear what failed…"

   "…the counter may have rebooted and so perhaps may have crashed in which case the clerk may not have been told exactly what to do." (*my emphasis*)

   "It is quite easy for the clerk to have made a mistake….",

   All of these comments rather suggest that there may be Horizon issues plus training and support deficits.

2. In her email of 13/2/2103 HR says: "I know you are aware of all the Horizon integrity issues…."

   This is an alarming statement for it is suggestive of the existence of Horizon issues and that they were known to GJ. This has obvious implications for GJ's court reports and appearances and his silence therein.

POL00006545

3. HR's ultimate conclusion is that this is not an issue which suggests a failing of Horizon itself; rather it is an issue of data presentation, *i.e.* the problem appears to be that the ARQ logs do not distinguish between system-generated and manual reversals, the answer being to create a new column in the ARQ log to facilitate that distinction.

   Whilst to a degree that is correct, given what I have said in 1 and 2 above that view may not be entirely sustainable. It may be suggested that the report is at the very least suggestive of Horizon issues.

4. The report in general terms reinforces the impression that GJ is not being entirely forthcoming about Horizon issues. An example of this approach may be found within his response to HR's first question, where she asks: "…also could you explain what happens when the system fails?" GJ does not begin to answer this question; he simply responds "….the system is behaving as it should."

   If the system is behaving as it should then the answers I reproduce in my Point 1 above are inexplicable.

5. Some may conclude from this that GJ's aim is to protect Horizon from criticism rather than to provide POL and the court with impartial and honest evidence.

In view of these matters I think that the information contained in the Helen Rose report meets the test for disclosure. It should not be forgotten however that information would only meet the test in a limited number of cases *i.e.* those where the defendant had conducted reversals and was blaming Horizon.

In view of these matters I am in no doubt that this document is disclosable. On the LPP point I rather fear that, if the matter were to come before a *criminal* court the judge would without hesitation order disclosure in the appropriate case.

Accordingly you may take the view that I should attempt to redact, or summarise the report into a disclosable document and in a form which serves the dual purpose of both disclosing that which should be disclosed whilst protecting the non-disclosable sensitive material.

Kind regards,

Martin & Simon.

From: Rodric Williams [GRO]
Sent: 10 July 2013 16:15
To: martin smith; Simon Clarke
Cc: Hugh Flemington; Susan Crichton; Jarnail A Singh
Subject: FW: POL -v- Ishaq - Proposed letter to defence solrs

Further thought on privilege – if Helen's investigation into this was undertaken purely for the Second Sight Spot Reviews, the entire report could be privileged.

POL00006545

I attach a couple of emails which set out the basis on which we have sought to claim privilege over our work on the Spot Reviews, including our communications with Fujitsu which sought to create a joint/common interest privilege.

Please let us know if Helen's report is still disclosable in light of this.

Happy to discuss as necessary.
Kind regards, Rodric

From: Rodric Williams
Sent: 10 July 2013 15:49
To: 'martin smith'; Hugh Flemington
Cc: Jarnail A Singh; Susan Crichton
Subject: RE: POL -v- Ishaq - Proposed letter to defence solrs

Thanks Martin.

First point – we presume that Helen Rose's report is being disclosed because POL's evidence in the prosecution included an ARQ report. Is that right?

Second point - Helen Rose's Report is marked "Confidential and legally privileged".

I understand that she did this because she prepared the report to give to Post Office Legal for legal advice on the implications of her investigation (please call her on GRO to confirm).

Please therefore consider what information from the report needs to be disclosed to Ishaq's solicitors, and in what format, i.e. whether parts of the Report should be removed or redacted (e.g. the "Recommendations" section), or the non-privileged material (e.g. the background transaction data) repackaged for disclosure to the Defence.

If you advise that Helen's report does not attract any privilege, please ensure the reference to privilege is removed from the header (I don't want to someone else to say that the Report is privileged, but that we waived thereby giving rise to possibly difficult issues of collateral waiver).

Kind regards, Rodric

Rodric Williams I Litigation Lawyer

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From: martin smith GRO
Sent: 10 July 2013 10:56
To: Hugh Flemington

POL00006545

Cc: Jarnail A Singh; Susan Crichton; Rodric Williams
Subject: POL -v- Ishaq - Proposed letter to defence solrs

Dear Hugh,

Please find attached a copy of the letter which we propose, subject to your agreement, to send to Ishaq's solicitors.

Kind regards,

Martin.

Martin Smith
martin.smith GRO
martin.smith
Direct: GRO

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