POL00103200

Message

From: Jane MacLeod [GRO]
on behalf of Jane MacLeod
Sent: 23/05/2016 07:14:04
To: Paula Vennells [GRO]
CC: Alisdair Cameron [GRO]; Alwen Lyons [GRO] Mark R Davies [GRO] Patrick Bourke [GRO] Tom Wechsler [GRO] Thomas P Moran [GRO]; Rodric Williams

Subject: Sparrow Board paper - REQUEST FOR ADVICE SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

Paula

You have asked us to advise on the questions set out below. I have responded as requested, having also discussed the matter with Mark, Tom and others. I will be prepared to address these issues as part of my briefing to the Board on Tuesday.

1) who have we engaged as our primary legal advisers alongside BD? If BD alone, are they equipped - experienced enough and street wise enough? And do they have specialism/experience in point 3 below? (You may have mentioned Linklaters in this context?)

We have instructed Bond Dickinson to act as our solicitors on the basis that they have advised us throughout on Sparrow and have a very deep understanding of the history, the individual cases and the political sensitivity of Sparrow. They are a highly ranked firm with the depth of resource and experience to represent Post Office in this litigation. In addition we have retained leading commercial barrister Tony Robinson QC who has extensive experience with group litigation and a wide background in civil litigation. (http://www.oeclaw.co.uk/barristers/profile/anthony-de-garr-robinson-qc). Tony will be key to developing and implementing the litigation strategy and when we interviewed him on Friday he had already grasped the political significance of the case. While Linklaters advised in the early phases on some aspects of Sparrow, they do not have an in depth understanding of the issues and would now take a considerable time and very significant cost to be become sufficiently familiar with the necessary complexity of the issues and the individual cases. It is also worth noting that no matter what we do PO will no doubt be accused of being the 'big bad corporate', Bond Dickinson are in that sense a much better match to Freeths, and bringing in a magic circle city firm would only reinforce the impression of a heavy handed approach.

2) who/what is our internal resource/governance?

The PO legal team (Rod Williams) and myself will work with BD. As set out in the GE board paper, and as discussed and approved at the GE meeting on 13 May, Tom Moran will be the internal 'client' for these purposes and his role will be to ensure that the overall strategy of the litigation protects PO, its network and attractiveness to future agents/postmasters. Both in this and in the management of the litigation, he will be supported by a Steering Group which will comprise representatives from across the business. At GE we discussed the following as proposed members: Tom Wechsler (representing you), Angela van den Bogerd, Mark Davies, Patrick Bourke, a representative from Finance (tbc), as well as Rod, myself, representatives from BD and when necessary, Tony Robinson QC. Key/strategic decisions will be discussed at GE.

3) I won't describe this correctly but you will follow my point (it relates to Sir Tony Hooper's concern and one of the issues at the heart of the Hillsborough case): can we (Al, Neil, Kevin and myself) have a deep dive on the issues related to the (im)balance of power of the institution vs the individual. We need to understand this irrespective of Sparrow.

One of the themes underlying the claim from Freeths turns on the nature of the contractual relationship between PO and the individual agents and whether we are in breach of an implied duty of 'good faith' (among other challenges). Over the next 2 months as we develop the response to Freeths' letter we will examine each of the themes raised by Freeths (including all those relating to the contract and the relationship between POL and postmasters) with a

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view to determining what (if any) weaknesses there are, and the appropriate strategy to address these. Where we believe there are issues, these will be flagged with a view both to addressing these on a BAU basis, as well as determining the 'right' strategy to address them in the litigation. Tom and the Steering Group will be critical to this analysis so that we maintain the right balance. Commercially we must ensure that the outcome from the litigation is to validate that the balance of power was and is fair. We will discuss the output of that review and our recommendations at GE.

4) the paper is well written, balanced and reassures me we will handle it well. Thank you. Notwithstanding... could you/Mark put on your blackest hats and think through the worst outcomes: I would like a downside horizon scan. Eg., are there any judicial review or (mis)use of public funds angles at all - costs expended to date, failure of our own mediation scheme.

Noted. We will develop a paper for the Steering Group and GE to consider these risks.

5) Horizon expert - the board note doesn't cover this: we need to brief the new NEDs and remind the others - could you/Tom give me a speaking note.

Deloitte are currently undertaking work to address certain of the recommendations made in the Chairman's report relating to Horizon. In commissioning that work we were cognisant that it would address (or lay the basis for) not only the recommendations of the Chairman's report, but also potential litigation, and possibly, prosecutions should we consider it appropriate to re-commence prosecutions against post masters (this is one of the issues that we should consider under 3) above). Both QCs that we interviewed recommended that we address the 'Rudkin' allegation – that is whether it is possible for PO/Fujitsu to remotely alter branch transactions without this being visible to the Postmaster. This is one of the streams of work under the Chairman's review and is therefore already underway.

Note that we will be considering how much further to go in addressing the recommendations from the Chairman's report in light of the litigation, and given that the same issues are now likely to be addressed through the litigation.

6) Stakeholders section: paras 22 and 23 - needs to include more on political, Goverment and IR stakeholders. Eg.. keeping ministers and MPs briefed and calm in the run up to the next GE; managing the CWU/NFSP; specific journalists and media interest; etc. Could Mark/Tom provide a speaking note.

We have already discussed with Mark the need to work closely together on a communications strategy, and this will recognise the interest of various stakeholders – including those you have identified. However, as flagged in the GE discussion, we need to be extremely careful what briefings we provide. While managing stakeholders will be important, we need to understand the risks to both them and PO inherent in such briefings.

7) I want to be sure we share all angles with the NEDs so they are fully appraised as to how noisy/difficult it could become. (At what point might it be sensible to give the board a deep dive, if the timetable plays out as you indicate?) I believe we will manage this well with our new board.

As with the GE discussion, I intend to make the point strongly that we will receive adverse coverage and that it will be very difficult – and indeed unwise – to respond in the press when the Court is now the forum in which the postmasters have elected to have these matters resolved. I don't believe it would be a good use of the Board's time to have a deep dive at this time. However once we receive the actual claim and we understand exactly what issues will form the basis of their case (and we have developed a strategy to expedite that), we will then be able to provide the basis for a more useful discussion. Based on the proposed timing for our response and the likely interactions after that, I believe it will be at least August before we have more clarity as to the likely issues. In any event, I propose to provide a brief update report to each Board meeting. This needs to come from me as a noting paper in order to maintain privilege.

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-----Original Message-----
From: Paula Vennells
Sent: 21 May 2016 11:32
To: Jane MacLeod; Mark R Davies; Tom Wechsler; Patrick Bourke
Cc: Alisdair Cameron; Alwen Lyons
Subject: Sparrow Board paper

Hi Jane/Patrick,
Thanks for the above. A couple of questions (some building on the GE discussion so I have the answers documented):
1) who have we engaged as our primary legal advisers alongside BD? If BD alone, are they equipped - experienced enough and street wise enough? And do they have specialism/experience in point 3 below? (You may have mentioned Linklaters in this context?)
2) who/what is our internal resource/governance?
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Thanks for a good and clear paper.
Paula

Sent from my iPhone