

From: "Parsons, Andrew" </O=BOND PEARCE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=AP6>
To: "Rodric Williams" <[REDACTED] GRO>
Cc: "Matthews, Gavin" <[REDACTED] GRO>
Bcc: "364065 01369 Horizon IT System Group Action E_Mails" <{F26859284}.4A-LIVE [REDACTED] GRO>
Subject: RE: Horizon - Jonathan Swift QC / Brian Altman QC / Deloitte [BD-4A.FID26859284]
Date: Tue, 19 Apr 2016 10:01:32 -0000
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Rodric

Please find below our thoughts on the Deloitte privilege question.

Legal advice privilege

As a general rule the implementation of legal advice is not covered by legal advice privilege and Deloitte's work arguably falls into this category.

For the Deloitte work to be covered by legal advice privilege it needs to feed back into JSQC for further advice. If JSQC does not provide further advice then I don't believe that the Deloitte work will be covered by legal advice privilege. I see that this is the intention stated in the Deloitte instruction letter but we need to make sure this actually happens for legal advice privilege to apply.

Litigation privilege

It is clear that litigation is contemplated and has been so for many years.

The first Deloitte report was commissioned based on advice from Linklaters directly on the topic of POL's litigation risks. This first report is clearly covered by litigation privilege.

In respect of Deloitte's new tranche of work, POL may be challenged that although one of the purposes of this work is the Group Action, this is not the "dominant" purpose: dominance being the threshold for litigation privilege to apply

I note that the Deloitte engagement terms do not mention the Group Action but refers to the more general wider Allegations. They do however refer to the JSQC advice and this, on first reading if the instruction letter, appears to be the dominant purpose of Deloitte's work.

Recommendation

In practice, we will assert both of the above and it will be difficult for Freeths to disprove this. The key is to create a clean paper trail.

Our recommendation would therefore be to instruct Deloitte solely on the grounds of the upcoming litigation. This would require a new letter of instruction to go to Deloitte which references the Group Action. This approach has the benefit of not referring specifically to the JSQC advice. If POL is challenged in Court around disclosure / privilege, we can then put the Deloitte instruction letter before the Court to show that the basis of those instructions was the threat of litigation and without having to mention the JSQC advice.

This instruction letter can come from POL or BD – makes no difference.

Kind regards
Andy

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From: Rodric Williams [REDACTED] GRO
Sent: 15 April 2016 20:02
To: Parsons, Andrew; Matthews, Gavin
Subject: Horizon - Jonathan Swift QC / Brian Altman QC / Deloitte

Andy, Gavin,

Following my discussions with Andy during the day, here's an update on two discrete issues arising out of Jonathan Swift QC's report to POL's chairman where we require your assistance. Andy – Mark Underwood has sent you this report, which is highly confidential and not to be circulated more widely to anyone other than Gavin at this time.

Brian Altman QC

Please find attached for information the instructions we sent to Brian Altman QC on the "theft/false accounting" and "balancing transactions/sealed baskets" issues raised by Jonathan, along with Brian's email setting out his preliminary views.

With respect to the "theft/false accounting" issue, I need Jonathan to confirm whether Brian can limit any review to the 19 Scheme cases which have the fact pattern Jonathan identified (charged with theft and false accounting; conviction on false accounting only), which Brian felt was reasonable. Andy, given that many of those cases are also CCRC cases, you were going to start arranging for these to go to Brian to help scope what his review might look like.

Insofar as the "balancing transactions/sealed baskets" issue is concerned, Brian and I agreed this could be parked until we know whether there is a "real problem" (as to which, see below re: Deloitte).

Deloitte

Deloitte have been scoping what they might be able to do to answer Jonathan's IT-related recommendations around "balancing transactions" and "sealed baskets", and are nearing the point where they can start writing up some of their findings.

I believe Deloitte's current work should be privileged because:

- it is being done specifically to enable Jonathan to provide his legal advice to POL's chairman;
- it relates back to the work Deloitte did in 2014, over which we have been claiming litigation privilege given its purpose was to assist POL respond to PMR allegations about Horizon which had been raised in Court (e.g. by Shoosmiths) and were reasonably likely to be again (based on repeated threats of court action e.g. from JFSA). This purpose was reflected in the initial instruction email (attached), the Engagement Letter which formally commissioned the work, and in Draft Report dated 24 May 2014 and Board Briefing dated 4 June 2014 produced by Deloitte;
- the latest work in and of itself was commissioned after the late 2015 announcements that Freeths would be pursuing litigation against POL (first confirmed in a letter from them to us on 12 December 2015), and hence was commissioned in reasonable contemplation of litigation and for the purpose of helping respond to allegations in litigation about Horizon (again reflected in the engagement letter for this work, which strictly speaking is a Change Note to the original 2014 Engagement Letter).

Mark U has sent Andy the Change Note to the Engagement Letter for Deloitte's current work. The Engagement Letter itself is Appendix 4 to Deloitte's 23 May 2014 report, and the first Change Note which led to the Board Briefing is at Appendix 5 to Deloitte's 23 May 2014 report, so you should already have access to these.

Given the notification this week that High Court proceedings have been started against Post Office (which we presume will include allegations about the Horizon system), before Deloitte takes any further steps on its current engagement **could you please consider and advise as to whether anything further could be done to strengthen Post Office's claim to privilege over the work product which Deloitte will shortly be producing, e.g. by Bond Dickinson formally instructing the preparation of the work product as POL's external solicitors.**

Please let me know if you need anything further.

Kind regards, Rod



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