
From: Chris Aujard[IMCEAEX-
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_CN=RECIPIENTS_CN=CHRISTOPHER+20AA0452485-80B7-40D2-ADE7-
6F6FEAE19CC3F88@C72A47.ingest.local]
Sent: Mon 02/03/2015 8:49:07 AM (UTC)
To: Jane MacLeod; [REDACTED] GRO
Cc: Belinda Crowe; [REDACTED] GRO; Rodric
Williams; [REDACTED] GRO; Patrick Bourke; [REDACTED] GRO
Jessica Madron; [REDACTED] GRO
Subject: Re: Sparrow - independent Horizon assessment
Attachment: image001.png

Hi Jane - the only points that I would add to Rod and Belinda's (very good) comments are that:

- 1) the board approved a prosecution policy that was predicated on at least some prosecutions being brought each year (for their deterrent value, to discourage wrongdoing); and
- 2) we have been told by CK (and there is no reason to think otherwise) that the likelihood of bringing many if any successful prosecutions remains low until such time as we have this expert's report.

Hope that helps. Am stuck on an immobile train at Ebbsfleet at the moment, so am not sure what time I will be in!

Cheers

Chris

Chris Aujard
General Counsel
Post Office Ltd
Tel: [REDACTED] GRO
Sent from my iPhone

On 1 Mar 2015, at 5:23 pm, Rodric Williams [REDACTED] GRO > wrote:

Jane,

The short answer is ICL's report could have uses beyond supporting BAU prosecutions, but right now I can't tell how much. I have set out below a longer answer, which I'm conscious will probably raise more questions than it answers.....

Background

ICL's report would primarily support BAU criminal prosecutions:

- Most prosecutions use Horizon in some respect (Cartwright King inform me that it's every prosecution, but I think we recently secured a conviction without reference to Horizon).
- Given the publicity Horizon has received, CK anticipate defendants will raise Horizon integrity as a positive defence in new prosecutions.
- Historically, Gareth Jenkins at Fujitsu provided rebuttal evidence. That is no longer considered appropriate, hence the need for someone independent of Horizon's supplier.
- Until we have the rebuttal evidence, we can't prosecute.

I don't have sight of ICL's work plan, so don't know whether the £65k-£80k report would give the definitive "answer", or identify further actions (e.g. testing, review of source code etc). I'll try to clarify this with Jarnail/CK before you meet with Jessica.

ICL's work will however overlap with a desk top review Deloitte did for us last spring. Deloitte's work will be provided to ICL, but I imagine ICL will have to overcome the main challenge Deloitte faced, namely the lack of material still available from Horizon's initial implementation, if they are to give a sufficiently robust opinion on Horizon for use in Court.

Application in Civil Litigation

Assuming this challenge is addressed, CK note that ICL's report would only look at the Horizon system as it is now, and that further reports would be necessary to apply the findings to specific cases, i.e. ICL will provide a "base" report to be supplemented in individual cases. This limitation would apply equally to any civil litigation in which we might want to use the ICL report:

- In a direct challenge to Horizon (e.g. a Scheme-related group action), the parties will need the Court's permission to use expert evidence. This would almost certainly be given, but the extent of the evidence would be determined by the pleadings in the case, which may not fit with the work ICL has done. The Court also has the power to order that expert evidence is given by a single expert, jointly instructed by the parties, which could preclude ICL (or Deloitte) from giving evidence. The Court is slow to order this where the expert evidence is contentious or goes to the heart of the claim, but I would think about asking for it if I was acting for SPMRs given the inequality of the parties' resources.
- In BAU debt collection matters, the use of expert evidence is likely to be restricted further for "proportionality" (i.e. cost/benefit). ICL's report may be less important in this context, given that we may be able to use agency law principles to hold the SPM liable to us for the accounts s/he signs off (e.g. as in the *Castleton* case).
- In either case, we would want to think closely about using a "base" ICL report in new litigation given the Civil Procedure Rules' requirement for the expert's report to state the substance of all facts and instructions material to the opinions expressed. This requirement could require the expert to reach back from the case in issue to state the instructions currently being given.

Criminal Proceedings

ICL's report could also have implications for past convictions:

- We're proceeding on the assumption that the findings will be favourable to POL. However, any adverse findings may need to be disclosed in past prosecutions if they would undermine the case for a prosecution or assist the case for the defence.
- The CCRC could ask for information about ICL's work - Brain Altman QC's report refers to the need to find a new expert - and its powers would trump the privilege in instructions, drafts etc. A favourable report could however go a long way to demonstrating to the CCRC the robustness of Horizon, and hence the safety of any conviction obtained on Horizon data.

Non-Legal Uses

I defer to those with more experience on how much value a POL-commissioned report would have in a non-legal context, but note that we have been challenged that whatever we produce is meaningless because of course we'd say our system is fine.

Please let me know if you need anything further. I'd be happy to sit in on your meeting with Jessica if either of you thought it helpful.
Kind regards, Rod



From: Belinda Crowe
Sent: 28 February 2015 09:14
To: Jane MacLeod
Cc: Chris Aujard; Patrick Bourke; Rodric Williams; Jessica Madron
Subject: Re: Sparrow - independent Horizon assessment

Jane, I probably have less to add than other recipients as I have not been fully involved in this. Chris and Rod will have a better view and also be better placed to explain the history. However, my understanding is that this was commissioned in relation to BAU court proceedings and it is still necessary for that purpose.

It was hoped that it could also be used in relation to rebutting allegations about the integrity of the Horizon system but, in terms of timing, that usefulness may have diminished for the moment as Scheme investigations have been completed. However, I think, as you suggest in your final paragraph below, that there would be value in having this to deploy (albeit retrospectively) as defensive ammunition.

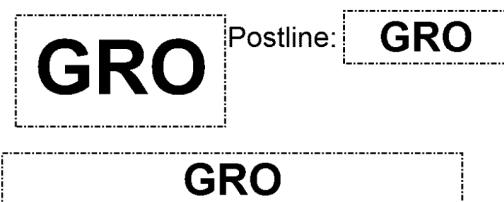
Additionally, in the event of increased legal activity arising from cases not resolved as part of the Scheme this work could not only be useful but vital.


I do believe, however, that if we are going to proceed we should do so as quickly as possible to enable us to get maximum value.

Hope that is useful.

Best wishes
Belinda

Belinda Crowe
148 Old Street, LONDON, EC1V 9HQ



On 28 Feb 2015, at 01:04, Jane MacLeod  wrote:

All

I have a meeting with Jessica Madron on Monday to discuss whether we should proceed with the independent report on Horizon that was discussed some time ago with Imperial College (see attached email chain). My understanding is that the cost of this report would be c£65k (I think) and would take (as set out in the attached) about 8-10 weeks to produce.

At the moment, I am unsighted as to whether/how will actually be of use to us, although I can imagine circumstances where it would be valuable (eg potential court proceedings).

I would be grateful for your views on this. While £65k is not an insignificant amount, if we thought that it would (albeit retrospectively) provide us with defensive ammunition against some of the allegations, then this would be helpful.

Your collective thoughts would be invaluable!

Thanks

Jane

 **Jane MacLeod**
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