

Message

From: Ben Beabey [GRO]
Sent: 10/05/2019 11:31:23
To: Harris, Josh [/O=WWH/OU=BRISTOL/cn=Recipients/cn=jharris]
CC: Ben Beabey [GRO]
Subject: DRAFT EMAIL RE BALLYNAFEIGH
Attachments: Bundlefromclient.pdf

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Hi Josh

Please see my draft email below that I'd like you to consider and check I have summarised the position accurately; in particular I have recounted what the local advice says about preserving the ability to pursue the balance at a later date. I anticipate Rod sending this either to Ben Foat or internally to a non-lawyer executive at POL hence the need for it to explain things in lay terms.

I'd also like to know, if you can get this information quickly today so we can get this off to Rod asap:

1. When was the PMR's contract terminated?
2. Have you got copies of any Judgment and the charging Order from the local Northern Irish agents? You'll see I note below that they have told you that at no stage did Mr McCartan even dispute the debt process, let alone raise Horizon but please can you double check that is correct.

Thanks

Ben

Dear xxxx

This matter requires instructions.

1. **The Issue requiring instructions.**

- Northern Irish branch: Ballynafeigh 168704 - former PMR Peter Damian McCartan - POL's charging order over his property at [GRO]
[GRO]
- This former PMR is **not** a Group Litigation claimant.
- He now wants to sell his property; this requires POL's consent to remove the charging order but there is not sufficient equity to pay off the full debt including interest.
- There is sufficient equity from the proposed property sale to pay off the original loss (c£45k) plus approx £8k interest.

2. **Factual background based on file documentation extracted from POL's Agent Debt team by DAC Breachcroft**

- The former PMR, Mr McCartan was in post from 18.04.2002 until 03.01.2013 when he was suspended due to an audit on that date indicating branch accounting deficiencies of £45,555
- POL's Agent Debt team engaged in correspondence with the PMR seeking repayment by demand letters in 2013 and then again in 2015. A copy of what DAC Beachcroft have on file from Agent Debt is attached; it is not certain if this is the complete POL file.
- A report from the audit visit in 2013 notes that when asked about the loss amount, the PMR said problems with accounting arose when *"the new pinpads went in and they were telling him to pay out double and he wasn't clearing his Horizon screen and settling the screen after every transaction and he later said he had underpaid a customer by £1000"*.
- On 9 June 2015, a report was sent from Simon Hutchinson of POL Security to Dawn Colclough, Helen Dickinson and Michelle Stevens headed "Case Closure Ballynaveigh". This report recounted that:
 - The PMR was interviewed under caution on 18.01.2013 and that the PMR *"denied theft, however he admitted inflating the cash figures to disguise the loss as he was fearful of losing his job"* it also notes that the PMR *"claims the losses were caused when the new pinpads were installed and he had not followed the POCA 'withdrawal limit' process correctly"*; it also notes that the PMR *"admitted it was deceitful to disguise the loss"*.
 - There was a second interview under caution on 22/11/2013 with the PMR accompanied by his NFSP representative. This report records that: *"At the termination of this final interview and after the tape recording has been switched off, Damian McCartan asked his NFSP representative **if he should mention Horizon now**, and was advised not to"*.
 - POL delayed putting any prosecution file to the Public Prosecution Service *"pending a report from specialists to address the Horizon issues and as the Horizon issue remains unresolved, and it may be a further six to nine months before a specialist report will be available, the time period involved in this may well become a matter of adverse comment in relation to Mr McCartan's human rights. The Post Office Northern Ireland Legal representative is in no doubt that Damian McCartan's defence team will raise an issue in that regard"*.
 - That *"Damian McCartan's unresolved Horizon issue was not identified, nor did it go to mediation, but I believe we can surmise that he was going to blame Horizon on the identified loss"*. The report goes on to refer to potential Human Rights arguments around delays in bringing criminal cases to court.
- This 2015 report was in response to an email from Dawn Colclough to Simon Hutchinson of 09.06.2015 in which she has said that *"...I have received the case closure for Ballynaveigh and I will now need to pursue Mr McCartan for repayment of the debt. Are there any issues I need to be aware of in advance of this? What is the unresolved Horizon issue as I was not aware this case was in the mediation scheme? The report also refers to Human Rights issues, can you please expand on the details"*.

3. The subsequent civil recovery activity

- DAC Beachcroft have confirmed that in due course local legal agents were instructed in Northern Ireland to pursue Mr McCartan for the branch losses as a debt by way of civil

recovery; this legal action resulted in a Judgment debt order and a legal charge being placed over Mr McCartan's property, [GRO] in 2015.

- The original debt due to POL was £44,839.18. Together with costs, interest etc. the total sum now due to POL would amount to just over £69K.
- However, as there will be a shortfall in the available equity on the property sale available to POL after other prior charges are also paid off and as POL will not be paid the total debt due (including costs & interest) in full, Mr McCartan's solicitors require POL's consent to proceed with the sale transaction.
- The amount which will be paid over to POL if the sale proceeds will be approximately £53K (the original debt + around £8K in interest).
- POL's local Northern Irish lawyers have stressed that if this amount is accepted from the property sale, this will not be in full and final settlement of the Judgment and the ability to recover the balance due will be available should POL wish to pursue Mr McCartan at a later date.

4. Instructions required

- Because the sale of the property cannot proceed without POL's consent; and that consent at this time would depend on POL agreeing to accept a sum less than the total due of the debt plus interest (ie accepting c£53k payment now as against an original debt of c£45k plus interest bringing the current total due to c£69k), POL has to decide:
 - Does it permit the property sale to go ahead and accept the lower amount of c£53k now from the sale proceeds which will pay off the original debt plus c£8k interest? That will leave the balance due as unsecured debt still owed by Mr McCartan; or
 - Does it refuse to permit the sale to go ahead unless the total debt and total interest (c£69k) is somehow repaid by Mr McCartan both from the property sale proceeds available to POL plus any other assets he may have.

5. Options and Horizon considerations

- The local Northern Irish POL lawyers strongly recommend accepting the sum available now from the current proposed sale of the property even though that is less than the total of the debt plus all interest accrued; they put it like this: *In the circumstances I don't think we have any choice; the security over the property was always going to be the only way to get money out of this guy and if that's all that there is left then we might have to take what is there. To refuse would be to possibly frustrate the sale and then we're back to square one.and..... Because we will not be recovering our full £69k however they need our consent to release the security. Based on the above figures are we happy to consent? I would be happy to recommend that we do on the basis that we would be recovering the full sum due plus an additional £5 - £8k in interest which will offset the client's cost. I don't see the merit in objecting as it will simply disrupt the sale and we're then back to square one.*
- However, in proceeding (in any respect) POL must be alive to how in 2013 and again in 2015 both Mr McCartan and POL did have "Horizon issues" in mind; these appear from the paperwork we have seen not to have been developed either by Mr McCartan in

defending the claimed loss in the civil legal process that led to the charge or in any mediation with POL at the time of his suspension.

- The local Northern Irish POL lawyers have specifically confirmed to DAC Beachcroft that when pursuing Mr McCartan for the debt and in obtaining a Judgment against him and in registering that as a charge against his property, at no stage has Mr McCartan even disputed the debt; he has not objected to or defended the civil recovery process; he has not raised any argument around Horizon nor does he now object to payment being made from the property sale proceeds to POL in order to remove the charge and to allow the property sale to proceed.
- That said, POL must recognise that there is a legal risk that in due course, particularly when the Horizon trial is ongoing, that Mr McCartan may revisit his own suspension and the basis on which POL has secured this debt recovery and questions around his own use of Horizon from 2013. An adverse outcome of the Horizon trial against POL is likely to increase that risk although the merits of any such future claim from Mr McCartan cannot now reasonably be assessed without second guessing his potential complaint and investigating unilaterally whatever more detailed analysis might be available.
- If the business is minded to accept a payment now from the property sale, then:
 - It can accept the most equity from the proposed property sale as is available to POL (that will cover the original loss debt plus c£8k interest which should pay off POL's own legal costs in having pursued this matter to date);
 - It will mean the charge in POL's favour on the property is to be discharged;
 - It can complete the above in a manner which nonetheless preserve's POL's right to pursue Mr McCartan personally for the balance of the sums due in unpaid interest;
 - However....the above steps must only be taken in the full understanding that there is an uncertain legal risk that, in the future, Mr McCartan may seek to rely on historic Horizon issues to open up the original losses and debt recovery and to look to recover from POL whatever sums are now to be paid out to POL to discharge this charge on his property sale.
 - If Mr McCartan does open up those Horizon arguments afresh, then it will become apparent that both he and POL were aware of some disputed issues around Horizon being raised or potentially to be raised by Mr McCartan, albeit it (based on what we have seen) in a limited way, in 2013 when he was under investigation by POL for the loss.
- Alternatively, the business can refuse to accept part payment of the total debt and all interest accrued which in turn will necessarily frustrate the sale (assuming Mr McCartan has no assets elsewhere to pay off all the accrued interest from his own funds) and POL will receive nothing by way of payment now and will have await any future sale and consider the financial position at that stage.

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M: **GRO**

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