

From: Swil, Jonathan
Sent: 06 August 2014 16:36
To: Band, Christa
Subject: RE: Project Sparrow

Yes. She was happy with our initial thoughts. This is what I was going to send about what she said. Will follow in a bit with the draft email to them.

I have spoken with Belinda. My suggested comments to PO are set out below. But a few key points to improve our understanding of the background:

- The Working Group have agreed to the preparation of this report and PO effectively had no choice. It arose because SS said they did not have the time/resources to deal with and properly investigate all of the issues in detail in each case so said they would prepare a "thematic" report which will be submitted by cross-reference as part of their assessment of each Applicant's case (unsurprisingly, the JFSA is keen for the preparation of this type of report), together with, presumably, a more cursory assessment of the facts of each case.

- The WG chairman has been taking a "judicial" approach to issues PO has come to him with i.e. he is remaining arms length and feels the time has come and gone where PO could and if it wanted to should have dealt with SS so PO now needs to live with them (although apparently off the record he has said he thinks SS's work is rubbish). Belinda didn't seem particularly confident, therefore, that he could be approached with any expectation that he would be supportive of taking a particularly tough line with SS or generally be on side.

- Accordingly, the response to this report needs to be to its content, not the fact it has been prepared at all. Also, while we can (and I have below) say ideally in ordinary circumstances you would sack SS, that is not an option – the PO Board has taken the view based on advice that because of the Minister's public statements committing to using SS, they are stuck with them (apparently come what may).

- Belinda agreed with the points I relayed (as per your and my call/emails and my call with Paul) and was grateful that she could go to the CEO this afternoon with a plan to respond robustly, and make some of the key points I discussed with her, but says that there are limits to how robust they can be because of the issues above.

- Unfortunately, the report (in whatever final form it takes) may go to Applicants as Belinda thinks it unlikely they will convince the WG to prevent the report going to them. The options as she sees it is either to achieve sufficient amendments that PO can live with it or prepare their own detailed response. If the latter, she thinks the detailed response will be sent to each Applicant when the SS "package" of documents (their two thematic reports, i.e. Part 1 and this Part 2, and draft case-specific report) is sent to the Applicant pre-mediation. The WG and Chairman will not be able to stop PO putting its view forward in that detailed response at that point, because PO are formally entitled to respond to SS's assessment of each case.

- SS had called for comments within 24 hours and Belinda pushed back and said they'd get an initial response in 48. She agrees a more detailed considered response should go later (such as she indicated, above) but wants to send a private shot across their bow now.

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OK – is everything cool?

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