

Nick Smith

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**From:** Nick Smith  
**Sent:** 04 November 2010 13:02  
**To:** Alastair Maclean; Carol Campbell  
**Subject:** Draft email

Alastair

Draft for you to consider. Do you want to send or shall I?

Carol has spoken to David at S&W and this takes account of these discussions.

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Dave/Donald/Jim

We have just had a very useful catch-up meeting with Richard Jeffrey and Joanne Glover from DLA.

However, I have to advise you of a significant development. We have, as you know, been working on the assumption that tie would be providing CEC with the full legal analysis by DLA together with the opinion of Richard Keen by Friday 19 November. This was agreed in order to allow sufficient time to have our own independent analysis of tie's position by CEC's QC.

Given McGrigors have now been appointed to lead this workstream in place of DLA, they obviously need time to get fully up to speed and they are also looking in depth at the evidence matrix underlying tie's assertions. This is clearly a good thing for both tie and CEC, as any subsequent legal opinion will not just be a "providing you can prove the facts you have a good case" opinion, but rather an opinion on prospects of success, having analysed at least some of the case evidence.

Richard has advised that tie now estimate that they will be unable to provide this information to us until Tues 30 November. Clearly this only leaves CEC with a very short window to have this considered by our QC, receive his opinion, reach a conclusion and incorporate it in the Council report. Short of a pointless and unjustifiable rubber-stamping exercise, this is a virtually impossible ( etable. Shepherd + Wedderburn are in agreement with this. Any further slippage by tie and their advisors will render the timetable absolutely impossible.

I should also mention that, even if the tie legal analysis is provided by 30 November, there remains a significant risk that the deadline will not be capable of being achieved. If, for example, the conclusion reached by tie's advisors on the basis of their much fuller and more detailed factual analysis is different to our own QC's advice on the basis of his more high level review, that is likely to be problematic and to require further investigation.

In circumstances where the deadline cannot be met there will be only two options - either make a decision on the basis of imperfect and incomplete advice and information or postpone the decision until full advice is available. Clearly I cannot recommend the former option.

We will obviously continue to work towards achieving the deadline, but I thought I had better flag the issue immediately as they have now moved their delivery date back two weeks (albeit for understandable reasons) without any corresponding move in the Council meeting date.

Kind regards

Nick

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*Please note that I am not in the office on a Monday*