
From: Alasdair Sim
Sent: 09 December 2008 12:23
To: Graeme Bissett (external contact); Steven Bell; Stewart McGarrity; Colin McLauchlan; Jim McEwan; Susan Clark; Alastair Richards - TEL; Bill Campbell (TEL)
Cc: David Mackay
Subject: RE: Legal services - quality review

Graeme et all,

Since Financial Close, I have been involved in various aspects of the project which have required legal input, both with DLA and with D&W. For this reason, I will address the points from my personal impression of both firms.

DLA

1. Scope of Legal Services.
 - Negotiating an IPR Licence Agreement between **tie** and EAL – Completed. This took a long time to agree with CEC and for this reason I am not completely satisfied with the service provided in this case.
 - Legal advice and drafting in relation to a Collateral Warranty from Carillion to EAL – Ongoing. Closing this agreement has been very frustrating, so not completely satisfied with the process.
 - Amendment to EAL Licence to deal with the construction of Burnside Road – Ongoing. Requires input from **tie** which is ongoing, so generally satisfied.
 - Review of outstanding legal agreements (post May 2008) drafted by D&W (from an INFRACO contract perspective) – Ongoing, but DLA are suggesting many step-down's into the BSC contract, which seem at face value, unnecessary. Generally satisfied.
 - Drafting of a Stray Current Agreement with Scottish Gas Networks – Approaching Conclusion – my personal involvement in this has been low, so comment on performance is not appropriate.
 - Negotiation of a set of agreements with the SUC's to allow post operations access (TEL agreement) – Ongoing - my personal involvement in this has been low, so comment on performance is not appropriate.
 - Negotiation of a Section 21 Agreement with Scottish Water for a deep level sewer beneath the Gogar Tram Depot – Just Commenced
2. Quality Delivered
 - **Technical Competence** – In general, I find the quality of legal advice to be good, although I do find that DLA can be particularly focussed on what (would appear to me as a layman) to be overemphasis on the minutia of technical legal drafting – which to my mind can lead to delays in getting documents agreed with the other party. Whether this is a responsible approach to ensuring risk is minimised, or an over cautious approach leading to fee burn. The big points tend to get agreed quite quickly, but the lower order ones seem to drag on. From my perspective, I would sum this approach up as 'overcomplicated' and very focussed on the contracts rather than necessarily the matter to be resolved.
 - **Right Advice First Time, clearly communicated, evidence of excessive caveating, changes of position** – Generally good, but sometimes tendency to over elaborate in explaining the position to the client in plain English. Accepting the fact that lawyers require instruction – it is not always clear from the advice, what the advice actually is and as a result, it is not always clear that an instruction is being sought or required.
 - **Timeliness of responses** – I find that at the Solicitor level, we receive an excellent timeliness of response. At the partner level, however I don't always feel that we receive the same level of service. For sure this will be related to the fact that the senior people tend to be involved in all sorts of other projects, but this doesn't necessarily mean that the tram project should have to wait on responses to e-mails or requests for specific advice. In general though DLA are pretty good in this respect.
 - **Positive Attitude to our Requirements** – Generally DLA are pretty supportive, however it is frustrating when there is a matter that involves both DLA and D&W in that both parties appear to be reluctant to engage effectively with each other even when asked by the Client to do so.

3. Compliance with Fee Estimates
 - I cannot comment on this area as I am not involved in DLA's budget.

D&W

1. Scope of Legal Services.
 - Negotiating a Bridge Agreement with Network Rail – Ongoing. Difficult party to deal with, and satisfied with D&W's advice – although delivery of drafts on time could be better.
 - Negotiating an Operating Agreement with Network Rail – Ongoing. Satisfied with D&W's input here.
 - Negotiating an agreement between CEC and Forth Ports – Ongoing. Requires input from **tie** which is ongoing, so generally satisfied.
 - Negotiating an agreement between CEC and Stanley Casino – linked to FP agreement. Requires input from **tie** which is ongoing, so generally satisfied.
 - Negotiating an agreement between CEC and RBS – Ongoing. Requires input from **tie** which is ongoing, so generally satisfied.
 - Negotiating an amendment to EAL Lease – completed, under review by DLA. This was concluded quickly – so very satisfied with D&W's approach
 - Legal and technical support on the notification of TTROs – ongoing. Very happy with D&W's support on this aspect of the project.
 - Legal and technical support on the TRO submission and approval process – ongoing. Very happy with D&W's support on this aspect of the project.
 - Implementation of the Building Fixings consent process, including the negotiation of 66 agreements with building owners – approaching completion. Not completely satisfied with D&W's level of support when the issue regarding the applicability of the contractor's signatories was raised.
 - Various access licences with a variety of 3rd parties to allow contractor access to non CEC owned land – ongoing on a needs basis. Generally satisfied.
2. Quality Delivered
 - **Technical Competence** – Deep knowledge of the project and in particular, the Tram Acts, understandable given the considerable history D&W have had on the project since conception - TRO's & TTROs are a particular strong point. On the property side, D&W have provided a high level of competent advice in dealing with sometimes difficult 3rd parties (NR, FP and EAL spring to mind), but I do find a frustration in closing the 'deal' and in particular getting CEC Legal to a place where they are comfortable to commit to signing up to a document. I also find a weakness in D&W in that they do not have an comprehensive knowledge of the contracts that **tie** have in place, given that they did not draft these, this is understandable – but it remains a weakness in some circumstances.
 - **Right Advice First Time, clearly communicated, evidence of excessive caveating, changes of position** – Whilst I believe that the advice given is of a high standard, in some circumstances the lack of contract knowledge leads to caveats – this creates uncertainty at CEC legal level and can add unnecessary delay.
 - **Timeliness of responses** – In a similar vein to DLA, at the Solicitor and planning technician level, we receive excellent timely response from D&W – generally better than DLA in this respect. At the more senior levels (Ann Faulds excepted), I have on the odd occasion encountered deadlines being missed or late response to queries.
 - **Positive Attitude to our Requirements** – D&W have been supportive of the project throughout their involvement, but I have found a reluctance to commit when DLA (or an outside legal party) have been involved as the boundaries of who is responsible for what tend to blur. The building fixings matter regarding the CAF position being a case in point, although this was probably an issue I personally should have identified earlier (having not appreciated the potential implications).
3. Compliance with Fee Estimates
 - We have managed to renegotiate the D&W fees (lower) on two occasions since their original appointment was confirmed. D&W have been happy to enter into these discussions and have been genuine in their estimate of likely expenditure. A project change has however been necessary to cover the building fixings process as this was taken out of the SDS scope and responsibility passed over to **tie** to attain these consents – this was not an original budget item, and one that would have been difficult to estimate at the outset due to so many uncertainties associated with more than 400 consents

required. (the cost of this item has been circa £240K) which has in part been absorbed by other savings in D&W's budget.

In summary, I would conclude that both firms in general offer quality support to the project (at a price, as both legal budgets are considerable). I am not comfortable that they engage effectively when asked to deal with each other – neither firm seem to be that much of a team player in this respect. I'm not sure that either firm has the complete confidence of Gill Lindsay, and this may be because both tend to identify potential issues (however low risk) by overuse of the caveat, or an unwillingness to simply say – “yes it is ok to sign this document”.

I trust this will assist your review of the process.

Regards
Alasdair

From: Graeme Bissett [mailto:graeme.bissett@dlaw.co.uk]
Sent: 02 December 2008 14:33
To: Steven Bell; Stewart McGarrity; Colin McLauchlan; Jim McEwan; Susan Clark; Alastair Richards - TEL; Bill Campbell (TEL); Alasdair Sim
Cc: David Mackay
Subject: Legal services - quality review

Colleagues, I would like to hold a review session with D&W and DLA before Xmas on the quality of legal service provision. Can you provide me with your top-level views on the following with respect to the period since May 2008 (Financial Close) :

1. Scope of legal services provided, where you have had substantive involvement (brief description of project requirements and legal services provided)
2. Quality delivered :
 - a. Technical competence (so far as you can tell) – or subsequent identification of flaws
 - b. Right advice first time, clearly communicated – or evidence of excessive caveating, changes of position
 - c. Timeliness of responses or service – or tardiness
 - d. Positive attitude to our requirements – or limited ownership of the problem
3. Compliance with fee estimates

Any other comments will be welcome, including suggestions for improvement in how we manage the effectiveness of legal services.

I intend to see the lead partners in w/b 15th Dec, so can I ask for responses by close of business on Tuesday 9th December.

Thanks

Regards
Graeme

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