

Andy Green
Chair, Nominet UK
By email only

17 November 2021

Dear Andy

Russell Haworth Payoff Breaches of Directors Duties

I refer to previous correspondence and the further post on my website that I sent you a link to.

Summary

Your initial response was to suggest that the directors not directly endangered by the EGM motion conducted all relevant business relating to Haworth. Mark Wood's phone call to Simon Blackler on the morning of the EGM shows that that was not correct. In that call, he clearly acts as though he owned that decision and that it was part of a board strategy. It seems that you have been misled.

When you piece together the secret waiver of rights letter, the consent and payoff for the pre EGM resignation and the desperate attempt by Mark Wood to use Haworth's departure to persuade Simon Blackler to withdraw his EGM motion, it paints a picture that this looks like directors using company money to protect their own jobs and reputations. That's not acting in the company's best interests. That would be an egregious a breach of the directors' duties.

It would also be an attempt to subvert a legitimate democratic exercise of members rights and powers at the EGM. The person trying to persuade Simon to do that had the most direct and obvious conflict of interests that you could ever imagine seeing. The whole board is responsible for all of that.

Conflicts of Interests

It's clear that all of the Directors who were on the EGM motion had a glaring conflict of interests when dealing with anything relating to that motion. Haworth leaving before the EGM with a settlement package would obviously fall into that category.

That's acknowledged in your email, where you said "*matters related to Mr Haworth's contractual arrangements and termination arrangements were **all** dealt with by non-conflicted directors*" [my emphasis] and on the Nominet Twitter feed "*non conflicted directors sought independent legal advice on a number of matters.*"

I think the assertion that there were non conflicted directors on the board at that time is wrong, but at a minimum your statements acknowledge that the directors facing removal were conflicted. So on that we have agreed.

Mark Wood's call to Simon makes clear that the "conflicted" directors were involved in the process and he (being one of them) was tasked by the board with trying to persuade Simon to drop the EGM motion; and in so doing save Wood's role as Chairman. You couldn't imagine a clearer conflict of interests.

However, I do not believe that any of the board members were free of a conflict of interests in this regard. From the outset, the entire board announced that they were opposed to the EGM motion; and indeed blocked the second EGM motion that was presented to them.

So each and every Nominet Director was wedded to rejecting the EGM motion and they (and the company) had campaigned vigorously to oppose it. It's reported that a six figure sum was spent on the "Vote No" campaign, along with additional staff costs for the time spent dealing with it.

So by the time Haworth's deal was done on the eve of the EGM, I would suggest that the whole board had an unavoidable conflict of interests. You will appreciate that having a perceived conflict of interests is all that it takes for a conflict to arise. They all (individually and collectively) had pinned their flags to the mast of the "Vote No", so anything that could help that win was something that they had both a perceived and an actual interest in. Where that required a significant payment by Nominet, that could otherwise have been avoided, that is a conflict of interests. None of the directors should have been negotiating that sort of deal with Haworth, much less doing it in the way that it was handled.

Chronology of Events

Let's recap the sequence of events that we know:

19 March 2021 - Nominet unilaterally promises to retain Haworth as CEO on the same payment package if he is removed from the board at the EGM. More significantly, it also promises to waive part of clause 21.1(i), which gave Nominet the right to remove Haworth at no cost and without notice if he was removed from the board. The second part of that massively weakens Nominet's bargaining position with Haworth, whether they want to keep him or remove him. They get nothing in return, other than expressing the purported desire to keep Haworth on as CEO after the EGM, whatever the outcome.

21 March 2021 - Nominet announces that it has consented to Russell Haworth's resignation. That wipes out the other material part of clause 21.1(i), which stipulated that he left with nothing if he resigned without Nominet's consent.

The recently published accounts show that Haworth received a severance package of around £300,000. That is essentially a payment in full for his notice period (wrongful dismissal/breach of contract) of 6 months; along with a loss of office (unfair dismissal) payment of around £121,000. So he got the absolute maximum he could have hoped for in

the High Court for breach of contract; along with around £30,000 more than the absolute statutory maximum he could have received for loss of office.

So Haworth's settlement was higher than the maximum he could have received in court (and much higher than in a tribunal) and takes no account of the litigation risk he would have faced in bringing such a claim. His risk of losing would have been significant given that he was about to be legitimately removed from the board by the members, but expressly retained as CEO with no loss of income.

That's without taking account of the absolute right to remove him at no cost that the directors had just waived in the secret side letter.

22 March 2021 - On the morning of the EGM, Mark Wood, one of the directors facing removal, telephoned Simon Blackler, driving force of Public Benefit UK and instigator of the EGM motion. In a 30 minute call, Wood pleaded with Simon to withdraw the EGM motion and so save him and the other directors from the risk of being removed, a risk that later came to pass.

I don't think it was appropriate for anyone to be making this request; but it was particularly inappropriate for someone as obviously conflicted as Mark Wood to be making it. It called for the hijacking of a legitimate exercise of membership power that was taking place within the company that was due to happen later that day. Simon quite rightly said no.

The membership had been asked a question and after a seven week campaign the answer was about to be delivered. To try to hijack that at the last minute was very wrong. For someone who stood to benefit personally from the hijacking, it was doubly wrong.

However, what was even more improper (and possibly corrupt) was the attempt to use Haworth's departure as a bargaining chip to try to persuade Simon to withdraw his motion. Having bought Haworth off with £300,000 of company money that didn't need to be spent, Wood then brazenly used that to say to Simon that it showed that he had won the argument and that Nominet was going to change direction.

I'm not sure where to start in unpicking how wrong and unlawful that behaviour appears to be to me; again from someone with a direct personal interest in the outcome of the negotiation.

But it is not Wood alone who is answerable for this. The entire board at the time allowed itself to be represented by Wood as he undertook this scheme. Rob Binns and Stephen Page signed the secret waiver letter. The other directors either were, or should have been, aware of all of this. If they were, they are as culpable as Wood, Binns and Page. If they were unaware, then they were failing in their duty to be managing the company at this level of decision making. Either way, none of them should survive urgent and thorough scrutiny by an independent investigation.

Why Did Haworth Have to Go Before the EGM?

In short, he needed to be bought off so his departure could be used to try to bargain the board out of facing removal at the EGM.

We've seen that, had Nominet held onto the powers provided in clause 21.1(i) of Haworth's contract, it could have let him go after the EGM at no cost without notice. According to Wood in his call to Simon, removing Haworth was what the board had decided, to mark a change of direction.

For Nominet, that would have been an appropriate step to take after the EGM. It would have probably been more effective than letting him resign suddenly the day before the EGM. It would also have cost the company no money.

Instead a deal was done to pay Howorth £300,000 to resign the day before the EGM. That did not benefit Nominet. However, it did benefit Wood and the rest of the board, who sought to use it to try to persuade Simon to cancel the EGM at the 11th hour. That would have prevented the removal of the four other directors from the board; and it would have prevented the entire board being shown to be out of step with the members and so with the company.

It was therefore in the interests of the directors (all of them, but especially those facing removal) to prevent the EGM motion from passing at any cost. One of those costs was needlessly paying Haworth more than he could ever have hoped to receive in court and £300,000 more than his contract provided if he lost office at the EGM.

It looks like it was a Hail Mary play. Simon rightly rejected it; but to those directors it was a price worth paying for the outside chance of success. It was also leveraged as a late play for votes, again on the basis that it signaled a change in direction.

None of that appears to be in the company's interests. It is in the directors' personal interests. To act in their own interests at the expense of the company's interest (which was to avoid an unnecessary and large payout) appears to be a clear breach of their duty to the company as directors.

Conclusion

1. Haworth was paid more than he could ever have received in a dispute; and £300,000 more than he could have got under his original contract when he was removed at the EGM.
2. The only reason I can see to do that (and to take the steps that led to that) was to secure his removal before the EGM, rather than after it.
3. That allowed Mark Wood to then use it to improperly try to persuade Simon Blackler to withdraw his EGM motion - saying Simona had already "won" and Haworth going was a sign of that. It was also used to try to sway late voters at the EGM to back the board.
4. Those reasons were in the directors' personal interests; they were not in Nominet's interests as a company.

5. Despite what you were recently told, this process had at its heart Mark Wood, one of the directors facing removal. It was definitely not handled exclusively by the directors not facing removal. Some of them may not have even known about it.
6. It appears to be a gross breach of the directors' duties to the company and, unless some other justification is presented, grounds for immediate removal of all of them from office.
7. There may be other consequences and remedies that the company can pursue against the then board.
8. I repeat my request that Nominet undertakes an urgent and thorough independent review of these events.

There has been chatter that the members are the problem with Nominet. I respectfully disagree. I think the problem with Nominet lay with the pre-EGM board and with the executives who worked alongside them.

We are at last dealing with the real problem. I hope you are the man to help Nominet continue down that road.

Yours sincerely

Jim Davies