POL00022706

Message

From: Andrew Parsons [GRO]
Sent: 16/04/2018 15:56:34
To: Thomas P Moran [GRO]; Jane MacLeod [GRO]; Mark Underwood [GRO]
CC: Rodric Williams [GRO]; Amy Prime [GRO] Jonathan Gribben [GRO]; Lucy Bremner [GRO]
Subject: RE: URGENT: CMC on Friday [BD-4A.FID26896945]

Thanks Tom

Yes – your views line up with others.

I had not thought about the direct impact on those being interviewed, but you are correct in saying that it would be a very stressful process for those involved.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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GRO

From: Thomas P Moran [GRO]
Sent: 16 April 2018 16:45
To: Andrew Parsons; Jane MacLeod; Mark Underwood
Cc: Rodric Williams; Amy Prime; Jonathan Gribben; Lucy Bremner
Subject: RE: URGENT: CMC on Friday [BD-4A.FID26896945]

Andy

Thanks for this. A very clear summary of what's a very complex issue.

On the basis of the information set out, I fully support your recommendation.

Items 1, 2 and 4 seem to me to be further applications of the principles we have established through the SG, albeit implicitly, of being constructive, helpful and reasonable.

Item 3 is different. I would be completely opposed to the request under Item 3 for the reasons you have outlined below but also because, to a non-expert, this feels far more to me like the kind of activity that would be done by either the police in investigating a crime, or in court once people are called as witnesses. It would be disrupting and unsettling to our business and the people involved and, as you say we are justified in disputing it, I agree we should.

I'm hopeful that my views will be consistent with others and we can therefore instruct you on this basis. Mark – please can you let me know asap if not as we would need to have an urgent discussion if so.

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Regards

Tom

From: Andrew Parsons [GRO]
Sent: 16 April 2018 14:55
To: Jane MacLeod <GRO>; Thomas P Moran <GRO>; Mark Underwood <GRO>
Cc: Rodric Williams <GRO>; Amy Prime <GRO> Jonathan Gribben <GRO>; Lucy Bremner <GRO>
Subject: URGENT: CMC on Friday [BD-4A.FID26896945]

Jane, Tom, Mark

We have a CMC scheduled for Friday that is principally focused on whether any further Orders are needed for the Horizon Issues trial. This email sets out our proposed plan of action, as already discussed with Mark. I apologise but this requires your urgent input.

Decision

Do you support the approach below?

Background

The starting point is to note that POL does not need any further Court Orders in relation to the Horizon Issues trial – we can give our expert, Robert, whatever he needs from POL and FJ voluntarily. It is the Cs who need further Orders to compel POL to handover information. The CMC on Friday is therefore very much about further Court Orders against POL.

Last Wednesday, we met with the Cs expert, Jason Coyne, to discuss what further documents and information he needed. Prior to this meeting, we had heard nothing from Freeths on the further Court Orders they wanted. We spent about 5 hours going through each of the Horizon Issues, with Jason setting out the lines of enquiry that he would like to explore. This was actually quite useful, although it highlighted the extremely wide approach the Cs are adopting. It was agreed that Jason would produce a matrix setting out his lines of enquiry and what documents / information he would like in relation to each of them. At the meeting, both sides thought that a CMC on Friday would be premature as there was a sensible way forward on the table that might be agreed if given a little more time. It was agreed that we would to take instructions on adjourning the CMC for 4-6 weeks.

On Friday, we received the attached letter from Freeths, in which they changed their position, did not provide the agreed matrix and made various requests for information and documents. It now looks as if the CMC will go ahead on Friday.

Options

POL's options are:

1. Refuse all requests for documents / information. Not recommended – its overwhelming clear that further information on Horizon is needed, it's a question of how much and how to deliver it.
2. Seek to adjourn the CMC – Not recommended – our judge does not like delay and this will look obstructive.
3. Provide what is reasonable – Recommended – POL provides what it considers reasonable in the circumstances and stands it grounds on the unreasonable requests.

Freeths position v our position

CMC Issue	Freeths position	Our recommended position
1. Freeths want more documents from POL	Wide requests for lots of documents	Re-draft the requests so that they are narrower following the strategy adopted at previous CMCs and then

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		agree to give those narrower classes of document. Only oppose requests that are plainly unreasonable.
2. Access to FJ systems	Freeths want access to the "PEAK" system and FJ's "change management" systems	Agree to this so long as it is done in controlled circumstances. This is similar to the access we provided previously for the Known Error Log. Position to be confirmed with FJ.
3. Access to people / further information	Freeths want to gather further information by interviewing POL and FJ staff.	This should be opposed. Instead, POL should offer to respond in writing to any reasonable requests for information. See further below.
4. Information from Claimants	Freeths do not want to provide any further information from the Claimants.	Seek an Order that the Cs need to explain the general trends of problems they encountered with Horizon so to narrow future requests for documents / information to targeted issues.

The key issue is number 3 above – giving Freeths direct access to FJ and POL employees.

- Freeths will say that direct interviews are the most efficient way to proceed.
- We believe this approach creates a major risk for POL. Allowing FJ to speak freely to Freeths would give us (i) no control over the message and (ii) allow Freeths to go on an uncontrolled fishing expedition. In my experience, FJ will (accidentally) say something unhelpful.
- This request is quite unusual. Typically, further information is provided in writing, either by way of further documents or witness statements. Indeed, there is a Court rule that expressly deals with providing further information in writing to experts. That said, Freeths request is not so unreasonable that it would be automatically dismissed by the Court.

We suspect that this issue will be highly contentious and will make it impossible to reach any agreement before the CMC on Friday. There is a serious risk that Freeths will paint POL as being obstructive (particularly as we will be giving Robert direct access to FJ). Nevertheless, the dangers of allowing FJ and POL staff to talk to Freeths is very high. Our recommendation is that POL contests this access, even if it puts us offside with the Judge.

To try to counteract the impression that POL is being obstructive, we would recommend that POL generously (but within sensible bounds) discloses more Horizon documents and gives the Cs expert direct access to certain systems (but not people).

Next steps

The CMC is on Friday. We will need to file skeleton arguments by cob on Wednesday. We therefore need to respond to Freeths by midday tomorrow at the latest, hence we need instructions asap.

Counsel has approved the above approach and so has our expert. We are speaking to FJ at 10am tomorrow.

Please do feel free to call with any questions. If you would like a con call to discuss, please let me know.

Kind regards
Andy

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