

Message

From: Ben Foat [GRO]
on behalf of Ben Foat [GRO]
Sent: 02/10/2019 21:30:37
To: Nick Read [GRO]; Alisdair Cameron [GRO]; Mark R Davies [GRO]
CC: Shikha Hornsey [GRO]; Rodric Williams [GRO]; Sherrill Taggart [GRO]; Watts, Alan [GRO]; Daniel, Catherine [GRO]; Kenneth Garvey [GRO]; Gary Walker [GRO]
Subject: GLO - Disclosure Incident - Legally Privileged

Hi Nick, Al, and Mark

A disclosure issue has arisen in respect of the GLO Horizon trial for you to be aware. It appears that Post Office failed to disclose potentially relevant documents in those proceedings. You will recall that we are currently awaiting the Court's judgment in respect of those proceedings.

Context

Fujitsu had previously informed Post Office that the "Known Error Logs" (KELs), which were key documents in the Horizon Issues trial because they documented for helpline staff the known issues in Horizon with the work around and fixes, were overwritten when updated such that no previous versions were kept and only current versions could be disclosed. Post Office relied on that information when completing the Electronic Disclosure Statement which was subsequently communicated to the Claimants in December 2017. However, Fujitsu advised Post Office yesterday that past versions of the KELs do, in fact, exist. Consequently, the scope of disclosure as represented and provided was inaccurate.

Issue

1. Post Office's credibility and the perception around Post Office's approach to managing the litigation (ie Claimants' overarching criticism of Post Office not being transparent, seeking to conceal and not providing full disclosure); and
2. Whether the previous KELs (the volume is not yet known) could cause the experts to change their evidence and/or impact the substance of the case before the Court

Actions/ Next Steps

Post Office remains under a disclosure obligation and therefore is required to notify the Claimants of the extra KELs urgently. This is likely to result in the Claimants notifying the Justice Fraser as part of their overarching criticism of Post Office's disclosure.. The GLO Legal team (externals and in-house lawyers) are, together with the CIO and her team, drafting the appropriate disclosure.

There are a number of next steps:

1. We will write to the Claimant solicitors tomorrow advising them of the issue and updating the Electronic Disclosure Statement – the Legal team recommends explaining Post Office relied on FJ when it made its inaccurate disclosure statement and offering to provide the previous KELs upfront;
2. FJ have been instructed to provide the previous KELs to us which we will need to assess and disclose to the Claimants;
3. We need to have an understanding of whether the KELs (the scale of which is to be determined) would likely affect the evidence that was provided at Trial.
4. Justice Fraser may reconvene the Court and seek further evidence from the experts as to whether previous KEL versions would have affected their evidence. If this occurs Post Office may be liable for the costs of the hearing (for both sides);
5. Stakeholder management – the Board and UKGI should be advised of this development though we still need to finalise some of the investigation so that we can properly brief them. Mark Davies / Comms should be made

aware (especially if the Claimants do complain to the Court and Court is reconvened where this issue could become public).

6. Horizon Contingency Planning – factor in the likely adverse comments that Fraser J may make as a result of this issue and what specific findings he could make around POL processes in respect of Horizon and its processes in respect of this issue.

I have also asked the Legal Team to advise on POL's prospects in respect of a right of action against FJ in these circumstances though I appreciate that the issue needs to be considered in a broader context (supporting the future GLO case; broader commercial impact; business continuity gap / alternative provider etc). In addition, I have asked the team to ascertain what Post Office did to assure itself that the information provided by FJ (its outsource supplier) was accurate and what controls were/are in place to provide such assurance. One of the areas that we have already been considering is whether FJ should be joined to the proceedings depending on the outcome of the Horizon Judgment.

Input Sought

Please do let me know if you would like to discuss or see the Disclosure Letter tomorrow before we send it across to the Claimants solicitors.

I will continue to update on the progress of the matter. Please do let me know if you have any queries in the meantime.

Kind regards
Ben



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