

Message

From: Ben Foat [GRO]
Sent: 20/10/2019 20:13:59
To: Emanuel, Catherine [GRO]; Rodric Williams [GRO]; Veronica Branton [GRO]
CC: andrew.parsons [GRO]; Lerner, Alex [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Sherrill Taggart [GRO]; Kenneth Garvey [GRO]; Lerner, Alex [GRO]
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Thanks Kate

Rod / Veronica – this will need to go to the Board sub-committee for a decision on Tuesday. Just to be clear:

1. Audit – to be limited to the process of KELs extraction
2. Analysis – not to review the remaining 14000 scripts noting that the ones that were disclosed at trial were the ones that were relevant to a fact in issue and therefore we only need to review the previous versions of those. If the claimants’ solicitor request all then we need to have a position on that , which is?

Thanks
Ben



Ben Foat
Group General Counsel
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile : [GRO]

From: Emanuel, Catherine [GRO]
Sent: 19 October 2019 16:03
To: Rodric Williams [GRO]; Ben Foat [GRO]
Cc: andrew.parsons [GRO]; Lerner, Alex [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Sherrill Taggart [GRO]; Kenneth Garvey [GRO]; Lerner, Alex [GRO]
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

All,

I set out below a slightly revised version of Rod's draft update which has been discussed today between HSF, WBD and Tony Robinson QC. As any voluntary review risks producing adverse material (feeding into the C's case that the bugs disclosed thus far are the "tip of the iceberg") we wanted to be clear on the scope of Post Office's current disclosure duties before making any recommendations.

These are deceptively complex questions so happy to discuss if anyone has comments or queries. I am on [GRO]

Kind regards
Kate

Introductory Comments

- The key legal risk underpinning these analyses is the ongoing duty in the GLO litigation to disclose adverse documents which come to Post Office's attention as a result of any voluntary form of review work.

New KELs

- Post Office has approached its review of the back-versions of the KELs in light of its legal obligations. In that regard, the KELs fall into two categories: (1) those relied upon by the Claimants at trial (658); and (2) those disclosed to, but not relied upon by the Claimants (14,000). The Claimants have requested back-versions of the first category of KELs but not the second (the Claimants have asked whether Post Office will pay the costs of reviewing the second category).
- WBD has prioritised the review of the first category of KELs (i.e. the 658):
 - Of these, the majority (i.e. 85%) contain no new information (or inconsequential new information). The remaining 15% (i.e. 94) do contain new information.
 - WBD and counsel are assessing whether any of that new information could be of relevance to the Horizon Issues trial and we expect to have an update on progress by Tuesday's Subcommittee meeting.
 - If any of the new information is relevant (or the Claimants take the position that it is relevant), the risk is that the Horizon trial is re-opened and/or the judgment is delayed. There is nothing that can be done to mitigate that risk.
- In relation to the second category of KELs:
 - Leading counsel has advised that Post Office presently has no obligation to review these documents.
 - The key risk of doing so before the Claimants have asked for them is that we identify adverse documents amongst them which we are then obliged to disclose as adverse. This would be doing the Claimants' work for them. (If the Claimants do ask for these KELs, we are entitled to provide them without signposting which we consider to be adverse).
 - The legal advice therefore is that we should not review the 14,000 other KELs. We can revisit that decision if the Claimants ask for the documents, or Counsel's review of the 94 reveals information which warrants a wider review.
- WBD and HSF will between them work together to deliver such a review if required as expeditiously as possible.

Audit

- The question of whether to do an audit and, if so, what its scope should be is a difficult question; all the potential approaches create risk.
- The legal team consider that, as a practical matter, any such audit should in the first instance be confined to a review of the process undertaken to extract the KELs.
- The results of that audit can then inform a decision as to what further steps (if any) should be taken.

From: Emanuel, Catherine

Sent: 19 October 2019 11:01

To: 'Rodric Williams' <[REDACTED]>; Ben Foat <[REDACTED]>
Cc: andrew.parsons <[REDACTED]>; Lerner, Alex <[REDACTED]>; Watts, Alan <[REDACTED]>; Tom Beezer <[REDACTED]>; Sherrill Taggart <[REDACTED]>; Kenneth Garvey <[REDACTED]>
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Rod,

As promised I have been liaising with Alan this morning and we have a few comments.

I will send a revised draft shortly.

Andy – are you around for a brief word?

Cheers
Kate

From: Rodric Williams <[REDACTED] GRO>
Sent: 19 October 2019 04:54
To: Ben Foat <[REDACTED] GRO>
Cc: Emanuel, Catherine <[REDACTED] GRO>; andrew.parsons <[REDACTED] GRO> Lerner, Alex <[REDACTED] GRO>; Watts, Alan <[REDACTED] GRO>; Tom Beezer <[REDACTED] GRO>; Sherrill Taggart <[REDACTED] GRO>; Kenneth Garvey <[REDACTED] GRO>
Subject: FW: KEL documents [WBDUK-AC.FID26896945]

Ben,

Please find attached an updated Board update. Set out below are the key notes to address the points from your email on “what would it take to get all of [the KEL review] done by next week”, and “what is the scope [of a Fujitsu audit] that would diminish the risk [of creating documents that would then need to be disclosed to the Claimants]”.

External Lawyers – please comment/amend as necessary asap so that Ben can update the Board this morning!

Generally

- I have stressed (firmly) to the HSF and WBD teams the importance of this workstream. It is being escalated to Alan Watts at HSF and Tom Beezer at WBD to make sure our Board’s requirements are met (both cc’ed).
- The key legal risk here is the ongoing duty in the GLO litigation to disclose adverse documents, which may not exist (or which we may not have been aware of) but for taking the action now contemplated, especially in the context of material we had not previously seen.

New KELs

- WBD are assessing the risk over the weekend of the 94 newly disclosed high-risk KELs. By the middle of next week, Counsel will have reviewed these KELs in detail and given a view on whether they are likely to cause the Horizon trial to be recommenced / the judgment delayed (the Counsel team being best placed to identify the impact they may have on the trial they conducted).
- In relation to the other KELs not used at the trial (i.e. the majority of the c.14,000 new KELs), the key risk of reviewing these is that the Claimants have not yet asked for the documents, so by reviewing them now we are doing the Claimants' work for them.
- The legal advice therefore is that we should not review the 14,000 other KELs unless the Claimants ask for them, or Counsel's review of the 94 high-risk KELs warrants a wider review.
- WBD and HSF will nevertheless confirm resources to deliver such a review as required.
- By way if further background since the last update, having now considered the previously undisclosed KELs:
 - Many (maybe up to 50%) could be duplicates of previously disclosed documents, but because the KEL is a live database, the KELs could not be extracted in a way to avoid this duplication. This means a manual/slower “de-duplication” review is required.
 - If the new KELs are to be reviewed at pace (i.e. so that they are all reviewed by the end of next week), the trade off will be quality/assurance. A paralegal team is less qualified than the smaller, elite team of lawyers who ran the trial to assess the relevance of the new KELs to the matters in issue in the Horizon Issues trial. Having paralegals undertake the review therefore creates the risk of inaccuracies in the review process, which is compounded by the technical nature of the KELs.

Audit

- The best way to mitigate the risk of generating adverse/disclosable documents through an audit is to keep it focussed on Fujitsu’s litigation support provided to date, with any operational audit to follow once the litigation has been resolved and its associated disclosure duties concluded.

Please let me know if you need anything further.
Kind regards, Rod

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.

“Post Office Limited is committed to protecting your privacy. Information about how we do this can be found on our website at www.postoffice.co.uk/privacy”

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

This message is confidential and may be covered by legal professional privilege. If you are not the intended recipient you must not disclose or use the information contained in it. If you have received this email in error please notify us immediately by return email or by calling our main switchboard on **GRO** and delete the email.

Further information is available from www.herbertsmithfreehills.com, including our Privacy Policy which describes how we handle personal information.

Herbert Smith Freehills LLP is a Limited Liability Partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales whose rules can be accessed via www.sra.org.uk/code-of-conduct/page. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications. Herbert Smith Freehills LLP's registration number for Value Added Tax in the United Kingdom is GB 927 1996 83.