

From: BARKER David <[REDACTED] GRO>
Sent: Tue 02/04/2019 11:43:34 AM (UTC)
To: "pete.newsom" <[REDACTED] GRO>
 "Legal.Defence" <[REDACTED] GRO>
Cc: DURKIN Beth <[REDACTED] GRO>
Subject: RE: Thoughts on the trial so far [PM-AC.FID3854255]

Pete

Maybe what the witnesses need in future is (1) someone on the Fujitsu side (or PM) to go through their evidence with them, just to be sure that they are 100% certain of all of the factual content, and (2) PM to help the witness in being robust about any changes required. That said I fear that we are too late for this round.

Meeting in the juicebar opposite PaM sounds good. I will join you c.9.30 as I have a commitment first thing.

Best
David

David Barker
Partner
for Pinsent Masons LLP

D: [REDACTED] GRO M: [REDACTED] GRO I: [REDACTED] GRO

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From: pete.newsom <[REDACTED] GRO>
Sent: 02 April 2019 09:48
To: BARKER David; Legal.Defence <[REDACTED] GRO>
Cc: DURKIN Beth
Subject: [EXTERNAL] RE: Thoughts on the trial so far [PM-AC.FID3854255]

David

Happy to discuss further. The main problem was with witness statements they were written by the lawyers and the witnesses had to be very strong to get them changed. Due to the complex nature of Horizon and the plethora of contradicting sources of information the 'facts' are an easy target as not one person or body 'owns' the end to end process or technical content.

I will be in court tomorrow and will start by having a coffee in the juice bar opposite Pret (more seating available) sat in the window just after 9.00 if you are free.

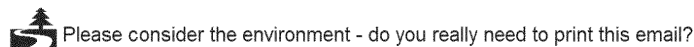
Pete

Pete Newsome
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From: BARKER David <[REDACTED]>
Sent: Monday, April 1, 2019 5:48 PM
To: Defence Legal (Chris Jay,) <[REDACTED]>; Newsome, Pete <[REDACTED]>
Cc: DURKIN Beth <[REDACTED]>
Subject: RE: Thoughts on the trial so far [PM-AC.FID3854255]

Pete

Pending Chris' reply I have included some comments below.

A couple of general observations:

1. I have been surprised by the number of times I have heard witnesses challenged on their own written evidence. In my experience a witness is usually challenged in a less direct way, not so much to the effect that their evidence is wrong, but that there are other matters which the witness has not covered which are relevant too (and which may be less favourable). One example of this was Tracey Mather's statement that every keystroke was recorded in Credence. My understanding from the cross-examination was that this was inaccurate and that in fact Credence records transactions. I found the "every keystroke" point surprising. If it were the case that every keystroke were recorded then that would be hugely relevant to this case. It's hard to see how that could have been included in the drafting without someone in the legal team picking it up and saying, "Is that really right?"
2. I infer from your email below that you would be keen that Fujitsu has more involvement/control in giving its witness evidence. I agree that this would be preferable. The only note of caution I would express is that without a very detailed understanding of the case it can be quite difficult to second guess the approach of the PO's lawyers.

Perhaps we can discuss on Wednesday?

Best
David

David Barker
Partner
for Pinsent Masons LLP

D: [REDACTED] M: [REDACTED] I: [REDACTED]

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From: Defence Legal (Chris Jay) <[REDACTED]>
Sent: 26 March 2019 12:25
To: Newsome Pete; BARKER David
Subject: [EXTERNAL] RE: Thoughts on the trial so far

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Pete,

Many thanks for this.

I am a little tied up supporting new business over the next day or two but will review and get back to you as soon as I can.

Best Regards

Christopher Jay, Senior Counsel

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From: Newsome, Pete [GRO]

Sent: 26 March 2019 11:43

To: BARKER David [GRO]; Defence Legal (Chris Jay) [GRO]

Subject: Thoughts on the trial so far

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David and Chris

Having reflected on the trial over the weekend I have the following comments and observations I would like to discuss regarding progress and Fujitsu's involvement in the current Post Office litigation

- The Claimants Councils approach appears to be is to introduce questions based on items not directly related to witness statements and not viewed in advance by the witness to find inconsistencies in statements based on cross referencing to other documents not necessarily seen by the provider of the statement (or Fujitsu as they were Post Office documents). This is putting the witnesses on the spot without the full information in front of them and being pushed into passing an opinion. This approach appeared to work in the first trial with this judge where the Post Offices witnesses were heavily criticised. **DCB: This is frustrating. The PO's lawyers obviously can't tell Fujitsu's witnesses what their evidence should be. However, there is nothing to prevent them from showing Fujitsu's witnesses in advance documents which they expect the Claimants' counsel to put to Fujitsu's witnesses. The PO should have these documents from disclosure.**
- If the trial is started again do we take more control of the statements. WBD drafted the ones signed by our witnesses and much of the evidence was 'second hand' e.g. Torstein's statement the sections on Legacy Horizon were from discussions with Gareth Jenkins. There were many errors in the statements that were hard for us to check in the time available. **DCB: if the current trial were to be vacated and a completely new trial convened with new issues then it may be possible to serve new witness statements, but even then the existing statements would still be documents which could be put to Fujitsu witnesses. If there are matters which need to be corrected then obviously the witnesses should flag that asap.**
- The premise of the trial is to rule on the robustness of Horizon (both Legacy and HNGX). I am worried that the WBD/Council approach does not give enough emphasis on proving the Core Audit process is robust as this is the data we provide in prosecutions. They also seemed to hide by not putting Gareth on the stand re-the

Misra trial and the explanation of the saving of a transaction twice in the audit store in legacy Horizon which was presented as a duplicate transaction which it was not and would not affect the branch accounts.

- The whole premise of this trial feels fatally flawed by the fact that a series of court officials who are not deeply IT literate are making decisions based on the cross examinations of a small number of unrepresentative witnesses. When you compare this with the time taken and the number of interviews and document checks undertaken by EY and others when we have a PCI or other audit over a number of weeks (often 2-3 months) by IT and Accounting professionals the chance of a true reflection verdict seems thin, more a feeling on the balance of evidence not an accurate representation of the processes and systems in place to develop and support the Horizon systems. **DCB: I understand the frustration and concerns. To an extent the court relies on the experts in particular for a very detailed level of understanding. The idea is that they have explored all the detail and only outstanding areas of disagreement should be left.**
- On balance of the evidence I have heard in this trial so far I do not see any increased risk that Fujitsu are likely to be dragged further into the trial process. Most of the unanswerable criticism seems to revolve around the bugs not being communicated to SPMs which is Post Office's responsibility not Fujitsu's.
- Key to this trial has always been the expert witness testimony so we need to review Jason Coyne's report in light of anything we would be worried about in light of the trial so far (I don't think there is) and anything we want to make sure WBD are aware of to express in Robert Worden's evidence. **DCB: I assume that PO's lawyers are very much engaged on this.**

In summary I don't think Fujitsu is any more exposed by the trial so far as we have never said that issues/bugs happened and that we have been able to show what happened. The main trials will be the individual ones and that will be based on the ARQ evidence so as long as WBD are making sure the audit process is seen as cast iron (which it is) and not side tracked by 'ambush' cross questioning.

Would be happy to discuss at some point and get your view on passing some of this to Wendy and Rachel within Fujitsu if we think it would inform senior management.

Thanks

Pete

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