
From: Alisdair Cameron [GRO]
Sent: Sat 16/03/2019 5:05:22 PM (UTC)
To: Jane MacLeod [GRO]
Subject: Re: Board sequencing - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Thanks Jane, very sensible. A few builds.

From now I think we should have the senior Norton Rose guy in the room so people can turn to him and say “sound right”? I would start Monday.

Secondly the big question for Wednesday has to be “what can we do to change the outcome on the Horizon trial?”

Thirdly as owner of the legal strategy you are going to have to give a personal recommendation on recusal on Monday - yes or no.

I would have Julie available at the end of a phone Mon or Weds and briefed for the “are we right” question.

Finally, how do you see us managing the mediation - who will be negotiating?

Thanks Al

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From: Jane MacLeod
Sent: Saturday, March 16, 2019 3:14:39 PM
To: Alisdair Cameron
Subject: Board sequencing - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Al

Just so as to manage expectations as to what we are doing for Board meetings over the next week regarding the various litigation related workstreams, I have set out below my understanding/plan, and would be grateful for your thoughts. We also need to consider legal representation, and I have set out the options, and my recommendations below.

BOARD MEETINGS IN THE NEXT WEEK

Monday 18 (17.15 pm)

- We have the Neuberger advice from Thursday
- I am working on a board paper that builds from that and sets out:
 - What the judge said that causes us concern
 - Why we should consider recusal (how this ties into the appeal strategy)
 - What the consequences are for that strategy if we don't proceed with the recusal application
 - Risks of going ahead
- One of Neuberger/Grabiner will be available to dial in and comment on the above.
- We will not have detailed advice on appeal strategy at this stage.

Wednesday 20 (12.30pm)

- Business responses to the litigation (Julie's workstreams)
- Comms/stakeholder responses update

Monday 25 (scheduled Board)

- Update on recusal strategy (if relevant)
- Update on Horizon trial
- Appeal strategy (Again we can bring a QC to this if required, but see comments on representation below)
- Wider strategy around management of legacy disputes arising outside the GLO (shadow 'scheme')
- Analysis of possible damages/compensation costs

If you are OK with this, I'll let Tim (and Veronica) know.

LEGAL REPRESENTATION

We will also need to be able to make recommendations as to legal representation. To that end:

1. Recusal – Lord Neuberger (advice) + Lord Grabiner (advice + court representation);
2. Appeal - there are 3 options:
 - a. Led by David Cavendar QC – existing counsel. This is the normal practice, as he conducted the trial whose judgment is being appealed, and is most familiar with the evidence presented, process followed, and legal arguments put forward which together underpin the appeal rationale.
 - b. David Cavendar QC supported by advice from Lord Neuberger – **Recommended**, as it has all the benefits of (a), together with the 'oversight' and challenge of Lord Neuberger
 - c. New QC such as Lord Grabiner or Mark Howard QC. In such a case we would not use David Cavendar or Lord Neuberger.
3. 3rd trial (November regarding limitation of losses and basis of damages). Depending on decision in 2, and timing of Appeal:
 - a. either David Cavendar or Antony de Garr Robinson (and the other would then be appointed for Trial 4 in March 2020) – **Recommended** as these trials build on knowledge and strategy developed in the Common Issues Trial, and to a lesser extent, the Horizon Trial.
 - b. QC appointed under 2(c) – although Lord Grabiner would probably be overkill for this and may choose not to be available
 - c. A different QC Which then raises the question of the 4th trial.

As per our discussion yesterday, the litigation strategy is led by the external counsel team, rather than WBD, who do the 'leg work'. I know Tom C is not a supporter of WBD (I haven't heard any rationale so assume it's because he believes they are too close to it, and/or not a magic circle firm). Norton Rose are brand new and we are bringing them in immediately to support – in the background initially, the BAU rectification work, as well as the 'shadow scheme' (as per above). It may be possible to get them (or indeed another firm) involved in Trials 3 & 4, but I think given timing and the volume of work, this is a risky strategy, and I would not recommend changing law firms.

I think we need an agreed management view on this, so would be grateful if we could discuss over the weekend, as no doubt the issue will come up on Monday.

Thoughts?

Jane



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