

---

**From:** Ben Foat [GRO]  
**Sent:** Fri 04/10/2019 5:12:28 PM (UTC)  
**To:** Emanuel, Catherine [GRO]  
**Subject:** RE: Legally Privileged - Legal Advice - GLO - Disclosure Incident

He did and thank you. Honestly, it meant so much when I received his email. I am dragged in all directions on so many issues that its nice to hear that the quality of the work is still there.

Thanks again for all your help too! Its such a comfort to have you on this – I just wish you were on our panel on other matters!

Have a great weekend.

Ben Foat  
General Counsel  
Post Office Limited  
[GRO]

---

**From:** Emanuel, Catherine [GRO]  
**Sent:** Friday, October 4, 2019 6:04:33 PM  
**To:** Ben Foat [GRO]  
**Subject:** RE: Legally Privileged - Legal Advice - GLO - Disclosure Incident

Ben, if Alan has not told you already, I should share his (and my) view that you have handled this impeccably!

---

**From:** Ben Foat [GRO]  
**Sent:** 04 October 2019 18:00  
**To:** Tim Parker [GRO]; Carla Stent [GRO]; Tim.Franklin [GRO];  
[GRO] Ken McCall [GRO] Thomas Cooper  
Watson, Richard - UKGI [GRO] Tom.Aldred [GRO]  
Alisdair Cameron [GRO] Nick Read [GRO]  
**Cc:** David Parry [GRO] Rodric Williams [GRO] Kenneth Garvey  
[GRO] Sherrill Taggart [GRO] Mark R Davies  
[GRO] Shikha Hornsey [GRO] Watts, Alan  
[GRO] Emanuel, Catherine [GRO]  
**Subject:** Legally Privileged - Legal Advice - GLO - Disclosure Incident

All

Attached is our actions tracker which shows the progress we are making on GLO KELs Disclosure incident.

In summary:

1. we have made the necessary communication to the Court and Claimants solicitors in the terms discussed yesterday. We have not had a response from them at this time.
2. Fujitsu (FJ) have commence extracting the KELs. The process is estimated to take 1 day, assuming no technical issues are encountered through the extraction process. We have proceeded expeditiously with extraction and disclosure and, if we feel it necessary to be sure we have provided everything, quality assure independently of Fujitsu the KELs later, but make that clear in our communications with the Claimants. This ensures disclosure is not delayed by any initial quality assurance exercise.
3. A review team has been stood up to review and assess the impact of the KELs when they are received from FJ.

4. We are finalising the CEO to CEO script and reserved rights letter to FJ complaining about this incident. This will cover our request for audit as agreed by Board yesterday. This should be ready by Monday.
5. External GLO lawyers are examining how the KEL disclosure, and FJ's involvement more generally, could be addressed in the existing GLO proceedings. In addition, the legal team will provide advice w/c 7 Oct on any potential claim POL may have against FJ (contractual or otherwise) flowing from FJ's mishandling of the KELs disclosure.
6. The horizon contingency planning team have been made aware and Comms preparations are underway with Mark Davies' team.
7. The IT team are engaged on this issue and we will work with IT to support them in any necessary governance and management control review and will, in due course, report back on what further controls could be introduced in respect of FJ.
8. The insurance position for the GLO as a whole is being considered by POL's broker Lockton. However, given that this event arises out of POL's conduct of litigation rather than its normal business operations, it seems unlikely that insurance cover will be available for it (assuming it gives rise to any quantifiable loss to POL) but we will confirm the position.

Please do let me know if you have any queries.

Finally, thank you for your time yesterday. Have a lovely weekend.

Ben Foat  
General Counsel  
Post Office Limited

GRO

---

**From:** Ben Foat  
**Sent:** 03 October 2019 15:48  
**To:** Tim Parker; Carla Stent; Tim.Franklin; Ken McCall; Thomas Cooper; Watson, Richard - UKGI; Tom.Aldred; Alisdair Cameron; Nick Read; David Parry  
**Cc:** David Parry; Rodric Williams; Kenneth Garvey; Sherrill Taggart; Mark R Davies; Shikha Hornsey  
**Subject:** Legally Privileged - Legal Advice - GLO - Disclosure Incident  
**Importance:** High

All

A meeting has been put into your diary for 4pm today.

The purpose of the meeting is to inform the Board and UKGI that a disclosure incident has arisen in respect of the GLO proceedings and to advise you of how we are managing the issue. The Board is asked to note the incident and to approve the approach which will be discussed on the call (which is broadly set out below).

In short, it appears that Post Office failed to disclose potentially relevant documents in the GLO proceedings (specifically in respect of the Horizon Trial). 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 has now advised Post Office this week that past versions of the KELs do, in fact, exist. Consequently, the scope of disclosure as represented and provided was inaccurate.

#### Issue

1. **Concealment and Procedural Breach** - Post Office's credibility and the perception around Post Office's approach to managing the litigation will likely be criticised (ie Claimants' previous overarching criticism of Post Office not being transparent, seeking to conceal and not providing full disclosure); and
2. **Potential Impact to the Court's findings** - 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. You may recall that the Claimants have advanced a case theory of "tip of the ice berg" which suggests that there are more errors than is fully known. However, it may be that the further disclosure of the previous KELs does not impact the evidence or the substance of the matter before the Court but we are unable to advise on this until the disclosure of the previous KELs is made by Fujitsu;

#### Actions/ Next Steps

Post Office is obliged to notify the Claimants of the error. 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, have notified the Claimants solicitors and the Court of the error and explained that it arose from incorrect information from FJ.

#### Management next steps:

1. **Communication to relevant parties:** we have written to the Claimant solicitors and the Court today advising them of the issue. In that communication, Post Office has made it clear that it relied on FJ when it made its inaccurate disclosure statement and has offers to provide the previous KELs to the Claimants upfront;
2. **Disclosure of the KELs:** FJ has already been instructed to provide the previous KELs to us which we will need to assess and disclose to the Claimants. This process is not as simple as it is not a matter of drop and dragging files across but rather the data needs to be specifically extracted from their systems. Consequently, it may take some time given the volume. We have asked FJ for an ETA on this but suggest that this be escalated by the CEO.
3. **Analysis of the KELs:** 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. We may wish to instruct our Court expert to assist us with this analysis;
4. **Impact to the Trial:** 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. **POL response to FJ:**
  - a. **CEO escalation:** irrespective of the Legal analysis below, this matter should be escalated to the CEO at FJ on a reserved rights basis to express POL's disappointment with this incident and to remind FJ of their ongoing obligation in respect of Court Case Support Services and indeed the previous discussion between Duncan Tait (FJ board director) and the previous POL CEO Paula Vennells in which she flagged a serious concern about the fragility of FJ witness statements which had either been disproved and or changed. I will forward an email from PV that refers to this conversation which I received earlier today. This escalation should be followed with a letter which reserves Post Office's legal rights in respect of this incident.
  - b. **Legal advice:** Legal is preparing an advice on:
    - i. POL's potential right of action against FJ in these circumstances though we 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). 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 which is a separate question.

- ii. POL's unilateral right to exercise audit and/or appoint a third party to review and test FJ evidence to date. There is a right to appoint a third party to audit the Court Case Support Services obligation.

**6. Impact to the Judgment / Horizon Contingency Planning:** The Horizon Contingency Team will 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.

**7. Stakeholder management:** we will notify and continue to update the Board and UKGI on the incident via email. The POL Comms Team has been made aware of the issue (as the Claimants are likely to complain to the Court and if Court is reconvened, there is a risk that the issue could become public. A Comms statement will be prepared as appropriate.

**8. Lessons Learnt / Controls over outsourced arrangements:** I have asked the team to ascertain what Post Office did to assure itself that the information provided by FJ (its outsourced 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

Board is asked to note the incident and approve the approach outlined above and/or to make any further recommendations.

I will continue to update on the progress of the matter by email after the call.

Please do let me know if you have any queries in the meantime.



#### **Ben Foat**

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

Mobile : GRO

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.

\*\*\*\*\*

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](http://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](http://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](http://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.