POL00285674

From: Rodric Williams[GRO
Sent: Thur 03/10/2019 2:51:02 PM (UTC)
To: andrew.parsons[GRO ; Emanuel, Catherine[GRO
Subject: FW: Legally Privileged - Legal Advice - GLO - Disclosure Incident

Fyi.....

From: Ben Foat
Sent: 03 October 2019 15:48
To: Tim Parker < GRO >; Carla Stent[GRO ; Tim.Franklin[GRO ; Ken McCall[GRO >; Thomas Cooper[GRO ; Watson, Richard - UKGI < GRO ; Tom.Aldred[GRO Alisdair Cameron < GRO >; Nick Read < GRO ; David Parry[GRO
Cc: David Parry < GRO ; Rodric Williams < GRO >; Kenneth Garvey[GRO ; Sherrill Taggart < GRO >; Mark R Davies < GRO ; Shikha Hornsey[GRO
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;

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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 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 the 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

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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.

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Mobile : GRO

From: Ben Foat
Sent: 02 October 2019 22:31
To: Nick Read <GRO>; Alisdair Cameron <GRO>; Mark R Davies <GRO>
Cc: Shikha Hornsey <GRO>; Rodric Williams <GRO>; Sherrill Taggart <GRO>; Watts, Alan <GRO>; Emanuel, 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, exit. Consequently, the scope of disclosure as represented and provided was inaccurate.

Issue

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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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