

From: Anthony de Garr Robinson [REDACTED] **GRO** [REDACTED]
Sent: Wed 12/09/2018 1:13:48 PM (UTC)
To: Andrew Parsons [REDACTED] **GRO** [REDACTED]; Simon Henderson [REDACTED]
[REDACTED]
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Cc: Jonny Gribben [REDACTED] **GRO** [REDACTED]; Emma Welch [REDACTED] **GRO** [REDACTED]; Lucy Bremner [REDACTED] **GRO** [REDACTED]; Gavin Matthews [REDACTED] **GRO** [REDACTED]
Subject: RE: Structure for expert report [WBDUK-AC.FID26896945]

Dear Andy,

This draft essay plan from Robert is both timely and helpful. I set out below my and Simon's combined thoughts on the plan. We recognise that some of these thoughts may miss their mark and that Robert will be alive to many of them points already, but would be interested to know what he thinks about them, and about how and where in his report he will deal with them.

Overview

1. We like the first part of Robert's overview section and we particularly like his positioning of robustness as the critical issue. However, we all need to be clear that for the client, the key objective is to satisfy the court that, when faced with any discrepancy in any branch's accounts, the chances are very small indeed that this deficiency is caused by Horizon, still less by any of the specific matters identified by Coyne. That the Horizon system is well designed / built is highly relevant to and helpful on that key question, but it is not the key question. We want to win even if (as seems to be suggested in some of the reports and other documents referred in the outline claim document) parts of Horizon were not perfectly designed / built for some or all of the time.
2. When we say "caused by Horizon", we mean caused by a bug or caused by any of the other issues raised by the common issues and/or by the outline claim document and/or by Coyne's report. At the risk of stating the obvious, Robert needs to ensure that he does not focus exclusively on bugs. We note that the outline claim document also makes complaints about "error repellency" and about the ability of Horizon to alert SPMRs to bugs (Issue 2); the adequacy of controls (Issue 4 and Issue 6); and the general process of reconciliation (Issue 5). Does Robert need an additional section or sections somewhere addressing the other issues?
3. In this context, it is worth adding that Robert should not simply focus on the specific criticisms which Coyne makes. We know that there are likely to be strong responses to them, but we also know that Coyne's approach is to throw as much mud in the hope that some sticks so he is likely to shift ground onto the more amorphous criticisms if he feels he needs to. The point is that the consideration of robustness and countermeasures needs to cover all this as well.
4. While on the subject of robustness and countermeasures (and thus the chances of Horizon causing discrepancies in branch accounts), to what extent will Robert be addressing the business processes surrounding the operation of the Horizon system, in addition to the countermeasures that are built into Horizon itself? If those processes are operated properly, branches should (for example) do cash balances on a daily basis. If these are done, it seems to us that the chances of an error going undetected and becoming impossible to resolve, reduce to a vanishingly small probability. The Horizon issues should not be approached as if the system is entirely automatic i.e. not affected by human interaction. An essential part of the system is how it is used by its users. To take an extreme example, if a user (negligently or fraudulently) persistently enters £20 as having been deposited when £200 was in fact deposited, and then fails to carry out any checks or worse, puts misleading entries in, there is little Horizon can do about it. All this is obvious but we wonder if there is scope for Robert to address the proper use and human operation of Horizon i.e. that part of the robustness of the system comes with users following proper procedures on a regular basis. This certainly would not be a principal line of attack, not least because we suspect that a significant number of postmasters may have recorded false balances in Horizon in order to conceal shortfalls. But we would like the judge to get a feel for the point

and would be interested to know Robert's views on whether and how it can properly and usefully be included in his analysis of robustness etc.

5. As regards the second part of his overview section:

- a. Yes, robustness and countermeasures should be placed up front, but as indicated in para 1 above, this is a stepping stone to the key question, which should be clearly identified.
- b. As to the proper scope of the robustness question and what should be treated as countermeasures, see para 4 above.
- c. Are Robert's views on the high level of robustness consistent with all the KELs referred to in paras 1.4, 1.4 and 4.1-4.3 of the outline claim document and the contemporaneous reports referred to in para 3.2(f) of that document? He needs to deal thoroughly with points such as this – as we are sure he is aware.
- d. Second and third bullet points – in the joint statement, Robert and Coyne both classed issues 1, 3, 4 and 6 together, but Worden now puts issue 1 after issues 3, 4 and 6. We are not sure that matters very much and, in any event, we think his way of looking at issues 3, 4 and 6 means that he sees them as stepping stones and subsidiary to issue 1, which raises the key question identified in para 1 above. If that is right, we like it. However, he will need to explain why he has taken this slightly different structure.
- e. We do not like the way Robert approaches issue 1 – starting with the relevant KELs then going quantitative (see also para 8 of the summary section at the end of his essay plan). Where does he include his analysis on the key point that undetected bugs were very unlikely to be the cause of permanent shortfalls in a branch's accounts (the point he repeatedly makes in the joint statement, in relation both to issue 1 and to issues 4 and 6)? This is much more important than and logically prior to the quantitative approach. It should accommodate his analysis of the relevant KELs (or at least the KELs referred to in para 1.3 of the outline claim document), including his analysis of how long it took to identify them etc. Hopefully, those KELs could be used as strong support for his conclusion, depending on things such as (1) how long it took to detect those KELs, (2) which features of those KELs resulted in their arising and not being detected until they were in fact detected, and (3) whether there are reasons for thinking it very unlikely that other bugs with similar features would have arisen. See further para 7 below.
- f. As to the quantitative upper limits approaches Robert refers to:
 - i. We welcome the fact that he recognises the desirability of treating them as backups (in case he is wrong on the key question).
 - ii. We also welcome that he recognises the need to explain the approaches and their logic in simple language in the body of the report, leaving any fancy calculations to an appendix.
 - iii. We are unclear about which approaches he will be adopting and the order in which he will be presenting them. Can he clarify on a single piece of paper?
 - iv. Will he be doing different calculations for different periods, before and after significant changes in Horizon – e.g. pre and post 2010? Does the logic of his approach suggest that he ought to do a separate calculation for each update/iteration of Horizon? If so, is this a problem for his approach?
 - v. Four big questions occur to us, some or all of which may be stupid:
 - (1) First, is it possible for him to do a calculation of the chances of a bug affecting a branch's accounts, before he calculates the maximum likely impact of such a bug on a branch's accounts? If this is possible, we see this as extremely desirable.
 - (2) Second, is there any possible tension between his conclusion that the chances of that happening are very low and his calculation of the maximum likely impact when it does happen?
 - (3) Third, I have looked at Gareth Jenkins' note on the payments mismatch bug dated 29/09/10 and I see that para 6 says that it had so far been identified that the bug had caused one discrepancy of £30k, one of £4,800 and others of less than £350. Does this pattern of losses call any or all of his quantitative methodologies into question? If not, why not?

(4) Fourth, as we discussed at our con in August, we wonder whether there is a point worth making in this context about the (im)probability of the patterns of losses alleged by the Claimants – which we think may be no or small losses for month after month, then much bigger losses in a few months (we may be wrong, of course). Might this be undermined or called into question by the Jenkins note and/or by the fact that Claimants may have accumulated small losses over a long period and concealed them by false accounting until it was no longer possible to do so? We would be interested to know what Robert thinks about this.

g. Fifth bullet point – do we have the chapters he refers to, or the most up to date version of those chapters?

Robustness: Countermeasures

6. The first part of this section makes points that seem sensible. However, we have two queries:

- a. Is it a problem that some contemporaneous reports appear to suggest that there were some serious deficiencies in Horizon (see para 3.2(f) of the outline claim document)?
- b. Robert will ideally be addressing the position when Horizon was first rolled out – will he be able to do so? More generally, will he be able to deal adequately with the position pre-Horizon online in 2010?

7. As regards the second part of this section (the table):

- a. Do these points allow an assessment to be made of the (very low) likelihood of undetected bugs being the cause of permanent shortfalls in a branch's accounts? If so, how? Which of the countermeasures had that effect? Did any other features that are not countermeasures also contribute to that effect (e.g. reconciliation, facilities for subpostmasters, facilities to Post Office etc)? If so, where are they taken into account?
- b. Are all of the points made in the table (e.g. good support processes):
 - i. safe to say?
 - ii. true for the whole of the period 2000 to 2018?
 - iii. consistent with the existence/duration/history of (1) the three bugs referred to in para 1.3 of the outline claim document (we would love to know how quickly they were identified) and (2) the other bugs referred to elsewhere in the outline claim document?
 - iv. consistent with the para 3.2(f) reports referred to above?
- c. Re- item 12 in the table, will this item include the business processes discussed in para 4 above? If not, where will those processes be covered?

On any view, some careful reasoning/deft footwork will be needed to deal with these points.

Summary of sections of the report

8. We are not sure how and where issue 2 (alerting subpostmasters to bugs etc), or issues 7, 10, 11, 12 and 13 (remote access), or issue 15 will be addressed?
9. Para 4 – is there sufficient available material to allow Horizon pre 2010 to be addressed adequately? And what about the possibility that Horizon was terrible when first rolled out? Also, should all Robert's calculations (of the low probability of Horizon causing losses, of the likely maximum amount of such losses etc) be different for the period up to 2010 and the period after it? See para 3.e.iv above.
10. Para 8 – see our points above. The most important point is that we would like a calculation/assessment of the probability of an undetected bug (and other Horizon issues such as error repellency?) causing losses in branch accounts, before any calculation/assessment of the maximum likely losses caused thereby.
11. Para 9 – does issue 10 go with issue 5?

Happy to discuss whenever convenient.

Best wishes,

Tony

Anthony de Garr Robinson QC

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From: Andrew Parsons GRO
Sent: 07 September 2018 07:36

To: Anthony de Garr Robinson (GRO)
Cc: Jonathan Gribben (GRO) ; Lucy Bremner (GRO) ; Gavin Matthews (GRO)
Subject: FW: Structure for expert report [WBDUK-AC.FID26896945]

Tony, Simon

I asked Robert to put together an outline of his report so that we can start to see the overall picture. I think this has helped move his thinking away from his quantitative analysis, back something closer to what we were all expecting.

All comments on the outline much appreciated. For my part, I thought it looked good.

A

Andrew Parsons
 Partner
 Womble Bond Dickinson (UK) LLP

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 e:

GRO

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From: robert worden (GRO)
Sent: 06 September 2018 16:58
To: Andrew Parsons
Cc: 'Chris Emery'; Jonathan Gribben
Subject: Structure for expert report

Hi Andy -

Attached is our proposed structure for the expert report , for your comments.

Robert

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