

Message

From: Andrew Parsons [/O=EXCHANGE-ORG/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AD9ED344815E47E4AAA3C0E7E1740919-ANDREW PARS]
Sent: 29/03/2019 15:19:04
To: Jane MacLeod [jane.macleod@GRO]; Rodric Williams [rodric.williams@GRO]
CC: Amy Prime [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ab7222dda3a9453eae5751238a59562-Amy Prime]; Tom Beezer [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=179d9f227294473d81b50e72aacb0623-Tom Beezer]
Subject: RE: Appeal strategy [WBDUK-AC.FID26896945]
Attachments: _DOC_154982194(1)_Recusal and Appeal Roadmap.DOCX

Jane

Please find attached the finalised flow diagram. The only material change from Counsel was to slightly increase the time for the legal appeal. Their current thinking is that the full legal appeal could take 4-5 days (which for appeal is a long hearing) and therefore finding Court availability within the next 6 months will be challenging. DCQC is drafting into the Grounds of Appeal, a request for expedition to try to accelerate the timetable as much as possible.

If you wish to share the attached with UKGI, please can you put something in the covering email to make clear that the document is confidential and subject to litigation privilege.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP



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From: Andrew Parsons
Sent: 27 March 2019 19:54
To: Jane MacLeod <jane.macleod@GRO>; Rodric Williams <rodric.williams@GRO>
Subject: RE: Appeal strategy [WBDUK-AC.FID26896945]

Jane

Answers below.

The clerks are still chasing the C of A re timings for the flow chart.

A

From: Jane MacLeod [mailto:jane.macleod@GRO]
Sent: 27 March 2019 13:21

To: Andrew Parsons; Rodric Williams
Subject: RE: Appeal strategy [WBDUK-AC.FID26896945]

Thanks Andy

This is very helpful. A couple of questions arising from this:

- In what circumstances could/would HHJF request the recusal application to be heard by a different judge? Only if he was incapable of hearing the application and given today's exchanges in Court he is definitely going to hear it himself.
 - If that happened what would be the implications? Substantial delay to the application whilst a new Judge reads in
 - I assume that a reserved judgment is more likely if HHJF were to reject the recusal application (reasoning would be required for an appeal)? That's our thinking but Fraser is unpredictable.
- In what circumstances can Claimants appeal. The Cs can appeal if the Judge recuses himself – they will essentially be applying for him to be reinstated. They may well want to do this because (i) Fraser favours them and (ii) it will be cheaper than starting again with a new judge.
- What happens to the Horizon trial?
 - New judge - Rehear or continue current trial? To what extent is this affected by any delay?
 - Do we have an argument that the witness evidence at the HIT should not have been allowed based on original directions of HHJF that it was to be expert only? Does this go to the 'procedural unfairness points'?

There are lots of permutations here:

- If Fraser does not recuse and does not stay the HIT pending appeal, he will continue to hear the evidence unless the Court of Appeal (i) orders an immediate stay or (ii) recuses him. If the HIT is stay, it will just be paused until the outcome of the recusal appeal is known.
- Assuming that Fraser is recused:
 - The simplest option is that a new Judge re-starts the trial with the same witnesses and evidence.
 - There is an idea in the legal team that the new Judge could read the evidence so far given and pick-up from where Fraser left it. This would be quite unusual but would save costs.
 - The new Judge may want to reconsider the entire case management structure and then scrap the Horizon Issues trial altogether. I can see a Judge seriously considering that option should he fear that the Horizon trial, or more importantly the run up to it, was already tainted by Fraser.
- Impact on trials 3 and 4 – particularly as regards orders given to date re trial timetable etc?
 - Trials 3 and 4 would be subject to revision. Although no firm decisions have been made yet, I suspect that we would look to scrap trials 3 and 4, and replace them with one big test cases trial, as we have advocated from the start.
- Costs implications – who decides these if HHJF is recused (either by himself or following appeal)?
 - On the initial application, the costs are like any other application. Fraser will decide these. If he refuses to recuse, the natural order will be for PO to pay the Cs costs, summary assessed and payable in 21 days. My best guess at those costs - £150k + VAT.
 - On appeal, same concept as above, but decided by the C of A.

I hope these make sense, although I appreciate they don't necessarily fit the flow chart!

Kind regards,

Jane

Jane MacLeod



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Mobile number: **GRO**

From: Andrew Parsons [mailto:andrew.parsons@**GRO**]
Sent: 27 March 2019 10:05
To: Jane MacLeod <jane.macleod@**GRO**>; Rodric Williams <rodric.williams@**GRO**>
Subject: RE: Appeal strategy [WBDUK-AC.FID26896945]

Ahhh... hit send to quick. I meant to say...

Not forgotten about this – just waiting for Counsel comments.

A first draft is attached – is this the type of thing you had in mind?

A

Andrew Parsons
Partner
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From: Andrew Parsons
Sent: 27 March 2019 10:03
To: 'Jane MacLeod'; 'Rodric Williams'
Subject: RE: Appeal strategy

Jane

Not forgotten about this – just waiting for Counsel comments.

A

From: Andrew Parsons
Sent: 25 March 2019 16:18
To: 'Jane MacLeod'; Rodric Williams
Subject: RE: Appeal strategy

Jane – I'll put something together.

A

From: Jane MacLeod [mailto:jane.macleod] GRO
Sent: 25 March 2019 14:45
To: Rodric Williams; Andrew Parsons
Subject: FW: Appeal strategy

Both

Please see request below – could we please prepare a shortish timetable that sets out the dates, issues, and inter-dependencies?

thanks



Jane MacLeod
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Mobile number: GRO

From: Watson, Richard - UKGI [mailto:Richard.Watson] GRO
Sent: 25 March 2019 09:08
To: Jane MacLeod <jane.macleod> GRO
Cc: Cooper, Tom - UKGI <Tom.Cooper> GRO
Subject: Appeal strategy

Jane

It would be helpful to understand the timetable for appealing and what impact the recusal application might have on that. I think you indicated that the Judge was willing to be flexible on the time limits for seeking permission to appeal and presumably POL are developing their strategy for an appeal.

Kind regards

Richard

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