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Subject: Report 3

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Importance: High

Andy -

Amongst the many issues you are thinking about over the weekend, you now have my decision to write a third report. Please call me if you'd like to talk it over at any time (not this evening or tomorrow afternoon). Meanwhile here are a few thoughts.

As you know, I believe it is my expert duty to do this, so I am going to do it. But I am acutely aware that having done my 'independent expert' thing on you, you have to manage the fallout in all directions. You are going to have to explain it to PO on Monday, stage-manage the whole presentation, etc. I'd like to say why (in my view) even if the short-term fallout is a pain, in the longer term it will be a very good thing for PO.

Maybe not in the best order:

- The trial is all about bugs in Horizon, and how they might have impacted the 560 claimants
- Over 20 years, Fujitsu have kept very good records - in the Peaks, OCRs, MSCs etc - of any possible bugs in Horizon, discrepancies, remote access events, etc.; and what branches they affected
- Fujitsu could never be accused of any 'corporate cover-up' of defects in Horizon. They wanted Horizon problem-free, and have done a good job of keeping it that way. They have chased down any possible bug as soon as they could, and recorded the process.
- So to find out how bugs in Horizon impacted claimants, you just need to go to those records, filter them by claimants' FAD codes, and count the possible impacts. This means 2,400 documents, rather than 500,000 .
- It's that simple, and it is a small job (why didn't I think of it before??)
- Compared to all that has gone before, this is a massive simplification of the case. Any judge would grab it with both hands , just to simplify his own job. There is no excuse for taking a complicated and obscure route - or rather, ignoring the simple route - when such a simple route exists. That is why I have to tell the court about it.
- It is also very bad for the claimants. Coyne and Green thrive on confusion; it is their only weapon. This removes confusion - or goes right round it - and cuts off the life-blood of their case.
- If PO want a clear, simple vindication of Horizon, this is the way to get it. Cut the crap.

This plays out against the background of Judge Fraser, his obvious anti-PO bias, and the recusal application.

I have now read the transcript of Wednesday's recusal hearing, and I agree with the Private Eye journo - Grabiner was good. He made a clear, well-argued case that in the Common Issues judgment, Fraser went well outside the bounds which he himself had set. His judgments trespassed into future trials, notably the Horizon trial, and revealed a closed mind on those issues. The appearance of bias is well founded. Green's reply was by comparison feeble, and from the transcript, Fraser knew it was. Green could not address Grabiner's key points. (I did like the 'mantra' point)

So I think there is a good chance that Fraser will cut his losses, and find some face-saving way to recuse himself next Tuesday - maybe invoking the 'benefit of the doubt' escape route that Grabiner offered him. That would give both sides several months to work out the new approach - and I would predict that in that time, it will eclipse the previous approach of: 'look at this random document and drag out a quote'.

What if Fraser does not recuse himself, and toughs it out, in the hope that the appeal court will close ranks with him?

- I will issue my third report rapidly. Even Fraser cannot stop me; CPR 35 is clear on that.
- There are no grounds on which the claimants could get it struck out; even trying to do so would look like desperation.
- Fraser will not want to look over-biased (if only or fear of giving more ammunition for the recusal appeal) and will read the report seriously.
- He will 'get it' more than the Silks; he likes to show that off.
- He will actually appreciate having the new report, because it simplifies his job, and leaves less room for him to be appealed against in future.
- Coyne will bluster but has no real reply.
- Each expert's XX will go through all the previous stuff, and will have half a day at the end for the 3rd reports.

Enough predictions - Ed.

Robert