

From: Andrew Parsons [GRO]
To: Charlie Temperley <[GRO]>
Cc: Dave Panaech [GRO], Amy Prime [GRO]
[GRO]

Subject: RE: Embargoed Judgments [WBDUK-AC.FID26896945]

Date: Sun, 9 Dec 2018 10:23:41 +0000

Importance: Normal

Inline-Images: image001.png; image002.png; image003.png; image004.png

Thanks Charlie

I think the key point is 2.6 PD40E – which allows dissemination inside the company. Rod will want this drawn to his attention as the reason why he cannot give it to PO's shareholders. Please can you prepare a PLSG paper that says something like the below. Get Dave to sign off and then send the draft to Rod for comments.

A

- Background
 - o Explain trial is concluded. Judgment reserved. Will get an electronic copy in draft before formal release of judgment.
 - o This note to explain law and process.
- The law:
 - o Quote paras 2.4 to 2.8.
 - Note that this means the draft J cannot go to UKGI or BEIS
 - Note the risk that some directors have dual roles (ie. on PO board and also work for UKGI) so need to not receive J or hold it confidentially for PO.
 - o Flag the risk of Court ordered embargo
 - o Flag Fraser's comments on the last day re special rules – could change everything.
- Timing
 - o Quote 2.3 – 2 working days is the minimum.
 - o Flag Fraser's comments about timing on the Judgement eg. end of Jan; hopefully before CMC on 31 Jan.
 - o Say we anticipate one week before handing down hearing, but no guarantess.
- Action Points to be addressed when we receive the draft Judgment:
 - o Corrections to the judgment (typos not substantive changes)
 - o Question of appeal?
 - o Question of costs?
 - o Question of any consequential orders (where the Judgment impacts on the rest of the litigation).
 - o Comms messaging: public and internal
 - o When and how to update UKGI?
 - o Operational mitigations needed (if any)
- Plan (assuming no special rules from the Judge and that we get a week) – this needs to go in a flowchart if possible.
 - o Legal team (WBD, Counsel + Rod, Mark and Jane) get copy immediately.
 - It may take up to 24 hours for the Judgment to be read and understood – it could be 100 – 200 pages of complex analysis.
 - o Meeting / call to be immediately arranged to take place 24 hours after Judgment lands:
 - Attendees: Counsel, WBD, Paula, Al, Jane, Rodric, Mark U, Mark D, Mel, Angela
 - Legal team to summarise Judgment
 - Group to form initial views on Action Points
 - Copy of Judgment to be circulated to group (if needed / appropriate). Not to be forwarded without permission of Rod.
 - o After meeting:
 - Board of Directors to be provided with exec summary of Judgment and actions that follow.
 - NOTE: PO to decide in advance whether the note goes to Tom Cooper?
 - UKGI to be notified that Judgment received and informed of handing down date – no details to be provided.
 - o Note – at approximately 3pm the day before the handing down hearing, the Court will publish a list of hearings so at that point an eagle-eyed person might spot that we have already received the Judgment and questions might commence
 - o At the moment of handing down:
 - Steering Group to be informed.
 - Comms messages to be released.

- Judgment to go to UKGI

From: Charlie Temperley
Sent: 07 December 2018 18:17
To: Andrew Parsons
Subject: Embargoed Judgments [WBDUK-AC.FID26896945]

Hi Andy

The position is fairly straightforward and will basically depend on what the Judge orders (he seemed to indicate that it would not be just the basis CPR PD40E rules).

Below is a summary of the relevant parts of the [Practical Law guide](#) on this:

- A draft judgment will be subject to the rules in CPR PD40E but may be subject to stricter rules if it is embargoed by the Judge (on terms specific to each case).
- PD 40E 2.4, you may supply a copy, in confidence, to the client, provided that:
 - Neither the draft judgment nor its substance is disclosed to any other person or used in the public domain; and
 - No action is taken (other than internally) in response to the draft judgment, before the judgment is handed down. (PD 40E.2.4.)
 - If the client is a partnership, company, government department, local authority or other organisation of a similar nature, additional copies of the draft judgment may be distributed in confidence within the organisation, provided that all reasonable steps are taken to preserve its confidential nature and the requirements of paragraph 2.4 of PD 40E (set out above) are complied with (see PD 40E.2.6).
 - Practitioners need to ensure that draft judgments are only disseminated within their firm or organisation to those directly involved with the case.
 - If the draft judgment is embargoed, solicitors cannot inform their client (or indeed anyone else) of what it contains until an hour or two before it is due to be handed down unless the court lifts the embargo.
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So in terms of advice for POL (and us):

- If there is no embargo then the rules above will apply and POL just need to be careful to avoid disclosure to the public, internal circulation (and indeed pre-emptive action) is not a problem.
- If there is an embargo then we need to see the terms of it before we can do anything:
 - We may not be permitted to even discuss it with POL.
 - There might be a loophole available for legal on the basis that they are also solicitors acting for POL rather than POL itself but we would need to look into this incredibly carefully (it is us on the record for example).

Please let me know if you would like me to dig deeper on this. A lot will depend on what precisely Fraser orders but we need to be alive to the possibility of an embargo that restricts us from discussing (or sharing) the draft judgment with POL.

Many thanks

Charlie

Charlie Temperley
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d:
t:
e:

GRO

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