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Subject: Recusal application steps [DRAFT] [WBDUK-AC.FID26896945]

Date: Thu, 14 Mar 2019 18:07:15 +0000

Importance: Normal

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All

My current view of steps to be taken in the recusal process (if triggered) are as follows (in time order so far as I can predict):

- 1) [Optional but recommended] POL (through WBD) engage with the QC who is likely to be instructed to make recusal application ASAP (if one is made) to get QC "warmed up" to application, arguments to be deployed and (potentially) to speak to POL Board if needed, as the person who would in fact be the mouthpiece of POL. **Timing:** Friday for choice of QC and delivery of papers.
- 2) Assuming a QC is to be "warmed up" David Cavender QC to brief on background as fully as possible. **Timing:** Friday.
- 3) POL to decide if it is to make a recusal application. **Timing:** By (say) Monday.
- 4) POL Board may wish to speak to Lord Neuberger as part of their decision making process. The Clerks at OEC have confirmed that is possible and have contact numbers for Lord Neuberger as needed. **Please NOTE** Lord Neuberger is not in South Africa as we had understood, but in South America (Argentina) which is currently **3 hours behind us**.
- 5) As soon as decision to make application has been made (if that transpires) Freeths & Judge to be put on notice. Suggested "appropriate" notice period is one day (or more if decision made earlier than early next week). Freeths put on notice by letter from WBD (or possibly Counsel to Counsel) and the Judge by a note between the Clerks ? **Timing:** early next week once decision to proceed made.
- 6) Gideon (at OEC) to be instructed to be Junior to chosen QC. **Timing:** Friday, if "warm up" route followed.
- 7) QC & Gideon prepare Application Notice and Skeleton for recusal application. This work could **start now** if we follow the "warm up" route.

8) Application is made first half of next week at 10am during the Horizon trial. Thereafter there are variables:

- a. Judge may agree. Unlikely but possible. HIT trial is adjourned there and then and POL appeals the CIT findings and (if successful) we re-list CIT & HIT.
- b. Judge may pass matter to another judge to hear. Unlikely.
- c. Judge refuses (likely) and POL takes that refusal to Court of Appeal asap. That could be same day (possible but unlikely) or at that same week at some point if CofA recognise urgency.
- d. CofA may agree with recusal application. If so, POL appeals the CIT findings and (if successful) we re-list CIT & HIT.
- e. CofA may refuse recusal application in which case HIT rolls on.

Please note in any scenario where HIT is adjourned then there will be possible increased costs consequences for Claimants that POL could bear if it is ultimately unsuccessful.

Possible outcomes of recusal application:

- a) It is successful and HIT adjourned then appeal of CIT goes ahead and new judge is put in place for remaining aspects of trials.
- b) It is unsuccessful (at first request and CofA) then it is likely that Fraser is cross but he is also aware the CIT appeal is progressing which includes the "procedural unfairness" assertion. Possible impact in that scenario is Fraser is more cautious as to behaviours to (possibly) POL's benefit.
- c) The theoretical downside to a recusal application is that it fails and that Fraser remains the judge at Trial 3 which will require multiple findings of fact. Findings of fact are more tricky to appeal and this is a point to be cognisant of.

All comments on the above welcomed.

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