

Message

From: Ben Foat [GRO]
Sent: 21/10/2019 07:09:48
To: Emanuel, Catherine [GRO]; Rodric Williams [GRO]; Veronica Branton [GRO]
CC: Andrew Parsons [GRO]; Lerner, Alex [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Sherrill Taggart [GRO]; Kenneth Garvey [GRO]
Subject: Re: KEL issue

Thanks Kate. Very helpful. Many thanks for the call last night. Appreciate it.

Kind regards

Ben

Ben Foat
 General Counsel
 Post Office Limited

[GRO]

From: Emanuel, Catherine [GRO]
Sent: Monday, October 21, 2019 7:58:21 AM
To: Ben Foat [GRO]; Rodric Williams [GRO]; Veronica Branton [GRO]
Cc: andrew.parsons [GRO]; Lerner, Alex [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Sherrill Taggart [GRO]; Kenneth Garvey [GRO]
Subject: KEL issue

Ben,

I said last night I would write this morning on this. The contemplated audit raises extremely difficult issues. However, to answer your questions:

1. You are correct that the risk of doing a medium or full review is that further damaging material comes to light. In almost any document-heavy case, we would grade this as a red risk. The risk is exacerbated in this case because of the complexity of the FJ material and because disclosure errors go to the substance of the dispute (it is the Claimants' case, supported by Common Issues, that Post Office has failed in its duty to disclose the existence/risk of bugs).
2. There is, however, also a risk of not doing an extensive audit. Given the KEL failure, unless an audit is done and concludes convincingly that everything that needed to be disclosed has been disclosed, Fraser J may simply draw a series of adverse inferences against Post Office. This is also a red risk. Post Office would probably need to notify Fraser J that it was doing the audit and request that the judgment is delayed until the audit is complete.
3. The rationale behind adopting a staged approach (i.e. narrow audit first) is that the results of that audit could inform Post Office's decision-making. If the narrow audit confirms that the KELS have been comprehensively extracted, Post Office might take some comfort from that. If, however, further material errors are revealed by the audit, Post Office may consider a wider audit is required.

Kind regards

Kate

From: Ben Foat [GRO]
Sent: 20 October 2019 21:04
To: andrew.parsons [GRO]; Emanuel, Catherine [GRO]; Rodric Williams [GRO]; Veronica Branton [GRO]
Cc: Lerner, Alex [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Sherrill Taggart [GRO]; Kenneth Garvey [GRO] [GRO]
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Andy (Alan and Kate)

Thanks for the summary.

There is no level of risk (RAG status on the likelihood or impact) and the paper doesn't give an answer/recommendation.

if we:

1. Do a narrow audit on the incident itself – there is a risk that we could be challenged around the limited scope though our response to that would be we are only reviewing that part because that was where the issue occurred – we aren't going to review every issue within the trial.
2. Do a medium review around Court Support services – The risk is that we can then be challenged on the scope and there is a risk that it could reveal large amounts of further damaging information which could result in more delays
3. A full audit on the controls of FJ again it could produce damaging information which would need to be disclosed, resulting in delay to the judgment, costs;

Delaying an audit after judgment is not acceptable because it could give the claimant's a right to appeal the judgment depending on the findings of the audit.

How does Counsel / External Lawyers propose we respond to the Claimant's questions and the provision of information – can we not at least have a third party like Deloitte do that? It strikes me as perverse (and Im worried the Board will agree) that we can do no checking of FJ when clearly there has been an error of this magnitude (even putting to side that we have critical legal (upstream contracts), commercial, and operational reasons why we have to audit FJ's controls generally).

Could you advise me what is counsel's recommendation if POL isn't to conduct an audit. Im taking this to GE tomorrow at 10am so would appreciate your thoughts before then.

Rod/ Veronica - This needs to go to the Board subcommittee on Tuesday for a decision.

Kind regards
Ben



Ben Foat
Group General Counsel
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile : [GRO]

From: Andrew Parsons [GRO]
Sent: 19 October 2019 14:25

To: Ben Foat <[REDACTED]>; Emanuel, Catherine <[REDACTED]>; Rodric Williams <[REDACTED]>
Cc: Lerner, Alex <[REDACTED]>; Watts, Alan <[REDACTED]>; Tom Beezer <[REDACTED]>
Sherrill Taggart <[REDACTED]>; Kenneth Garvey <[REDACTED]>
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Ben

Alan, Kate, Tony and I have just discussed this issue and we'll be circulating a revised update shortly.

I have answered the blanks in your email below in red.

Please also find attached a one page summary of Counsel's advice.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

d: [REDACTED]
m: [REDACTED]
t: [REDACTED]
e: [REDACTED]

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From: Ben Foat <[REDACTED]>
Sent: 19 October 2019 12:12
To: Emanuel, Catherine <[REDACTED]>; Rodric Williams <[REDACTED]>
Cc: Andrew Parsons <[REDACTED]>; Lerner, Alex <[REDACTED]>; Watts, Alan <[REDACTED]>
Tom Beezer <[REDACTED]>; Sherrill Taggart <[REDACTED]>
Kenneth Garvey <[REDACTED]>
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Thanks Rod and Kate. Much appreciated.

Rod's summary is much clearer than the summary that was contained in the table which is what we send to board so could we have someone sense checking this before it is sent to me. Frankly it wasn't good enough the version that was sent to me at first instance.

KELs analysis

In short, we have taken a risk based approach in reviewing the 14000 scripts which were generated by FJ. We have now completed the reviewed those KELs that were disclosable at trial (658) of which (94) were deemed to be in the 4 or 5 categories of adverse to POL's position because (they contain material new information that could change the Claimants' or the expert's views on Horizon bugs discussed at trial) . Can someone fill in the sentence – the synthesis of this is missing.

Audit

I was still awaiting an executive summary of counsel's opinion from WBD. Is this through yet? It should have been with me yesterday. It needs to be then synthesised for the Board table. Again, Rod's summary is more helpful than what was currently drafted. In short, we can proceed with a limited scope of an audit to FJ support provided to date but that a general audit /review could pose significant risks to GLO and therefore although a general audit must be completed at some stage (given other legal, commercial, and operational requirements) it is not recommended at the present time. Again, if someone could update the table to reflect that I would be greatly appreciated.

Rod – thank you for this email.

Kate/ Rod / Andy - Let me know when the table is finalised so I can send to Board and also GE.

All – can we also have a discussion about delivering at pace on this project. I appreciate it is a challenging matter but we can only make it better by delivering against GE, Board and Shareholder expectations or managing them in advance.

Thanks
Ben



Ben Foat
Group General Counsel
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile : **GRO**

From: Emanuel, Catherine <[redacted] GRO>

Sent: 19 October 2019 11:41

To: Rodric Williams <[redacted] GRO>; Ben Foat <[redacted] GRO>

Cc: andrew.parsons <[redacted] GRO>; Lerner, Alex <[redacted] GRO>; Watts, Alan <[redacted] GRO>

[redacted] GRO Tom Beezer <[redacted] GRO>; Sherrill Taggart <[redacted] GRO>

Kenneth Garvey <[redacted] GRO>

Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Ben,

There is one point that Alan, Andy and I want to iron out before the update and recommendations are circulated to the Board.

I appreciate this may delay the update but we would rather be sure that the recommendations we give are right. We are working as quickly as possible to get something to you.

Kind regards
Kate

From: Emanuel, Catherine

Sent: 19 October 2019 11:01

To: 'Rodric Williams' <[redacted] GRO>; Ben Foat <[redacted] GRO>

Cc: andrew.parsons <[redacted] GRO>; Lerner, Alex <[redacted] GRO>; Watts, Alan <[redacted] GRO>

[redacted] GRO Tom Beezer <[redacted] GRO> Sherrill Taggart <[redacted] GRO>

Kenneth Garvey [GRO]
Subject: RE: KEL documents [WBDUK-AC.FID26896945]

Rod,

As promised I have been liaising with Alan this morning and we have a few comments.

I will send a revised draft shortly.

Andy – are you around for a brief word?

Cheers
 Kate

From: Rodric Williams [GRO]
Sent: 19 October 2019 04:54
To: Ben Foat [GRO]
Cc: Emanuel, Catherine [GRO]; andrew.parsons [GRO]; Lerner, Alex [GRO]; Sherrill Taggart [GRO]; Watts, Alan [GRO]; Tom Beezer [GRO]; Kenneth Garvey [GRO]
Subject: FW: KEL documents [WBDUK-AC.FID26896945]

Ben,

Please find attached an updated Board update. Set out below are the key notes to address the points from your email on “what would it take to get all of [the KEL review] done by next week”, and “what is the scope [of a Fujitsu audit] that would diminish the risk [of creating documents that would then need to be disclosed to the Claimants]”.

External Lawyers – please comment/amend as necessary asap so that Ben can update the Board this morning!

Generally

- I have stressed (firmly) to the HSF and WBD teams the importance of this workstream. It is being escalated to Alan Watts at HSF and Tom Beezer at WBD to make sure our Board’s requirements are met (both cc’ed).
- The key legal risk here is the ongoing duty in the GLO litigation to disclose adverse documents, which may not exist (or which we may not have been aware of) but for taking the action now contemplated, especially in the context of material we had not previously seen.

New KELs

- WBD are assessing the risk over the weekend of the 94 newly disclosed high-risk KELs. By the middle of next week, Counsel will have reviewed these KELs in detail and given a view on whether they are likely to cause the Horizon trial to be recommenced / the judgment delayed (the Counsel team being best placed to identify the impact they may have on the trial they conducted).
- In relation to the other KELs not used at the trial (i.e. the majority of the c.14,000 new KELs), the key risk of reviewing these is that the Claimants have not yet asked for the documents, so by reviewing them now we are doing the Claimants' work for them.
- The legal advice therefore is that we should not review the 14,000 other KELs unless the Claimants ask for them, or Counsel's review of the 94 high-risk KELs warrants a wider review.
- WBD and HSF will nevertheless confirm resources to deliver such a review as required.
- By way if further background since the last update, having now considered the previously undisclosed KELs:
 - o Many (maybe up to 50%) could be duplicates of previously disclosed documents, but because the KEL is a live database, the KELs could not be extracted in a way to avoid this duplication. This means a manual/slower “de-duplication” review is required.

- If the new KELS are to be reviewed at pace (i.e. so that they are all reviewed by the end of next week), the trade off will be quality/assurance. A paralegal team is less qualified than the smaller, elite team of lawyers who ran the trial to assess the relevance of the new KELS to the matters in issue in the Horizon Issues trial. Having paralegals undertake the review therefore creates the risk of inaccuracies in the review process, which is compounded by the technical nature of the KELS.

Audit

- The best way to mitigate the risk of generating adverse/disclosable documents through an audit is to keep it focussed on Fujitsu's litigation support provided to date, with any operational audit to follow once the litigation has been resolved and its associated disclosure duties concluded.

Please let me know if you need anything further.

Kind regards, Rod

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