

Message

**From:** Andrew Parsons [GRO]  
**Sent:** 24/10/2019 05:45:01  
**To:** Emanuel, Catherine [GRO]; Rodric Williams [GRO]  
**CC:** Lerner, Alex [GRO]; Jonathan Gribben [GRO]; Kenneth Garvey [GRO]  
**Subject:** Re: KEL documents [WBDUK-AC.FID26896945]

Yes. Will call this morning.

A

On Wed, Oct 23, 2019 at 10:27 PM +0100, "Rodric Williams" <[GRO]> wrote:

Thanks Kate and Andy.

Andy – can I call you tomorrow to discuss so I can update the Board Update before the SteerCo tomorrow?

Ken – copied for sight.....

**Andrew Parsons**

Partner  
Womble Bond Dickinson (UK) LLP

d: [GRO]  
m:  
t:  
e:

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**From:** Andrew Parsons [mailto:[GRO]]  
**Sent:** 23 October 2019 17:06  
**To:** Emanuel, Catherine <[GRO]>; Rodric Williams <[GRO]>  
**Cc:** Lerner, Alex <[GRO]>; Jonathan Gribben <[GRO]>  
**Subject:** RE: KEL documents [WBDUK-AC.FID26896945]

Kate

We have a call with A&M at 8pm tonight.

No more progress on the KEL review because I've asked Tony to turn his efforts to the KEL response letter that now urgently needs to go out the door.

He'll then circle back to the remaining KELs to be reviewed of which there are about 15. We will then have a shortlist of about 25 (I'm guessing) KELs that will need FJ's input. We are collating list of all the questions to FJ on these 25 but before sending that to FJ we need to take tactical decision on whether that is a good idea, bearing in mind that sometimes we ask FJ a question and get answers we don't like!

A

**Andrew Parsons**

Partner

Womble Bond Dickinson (UK) LLP

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m:  
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**GRO**

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**From:** Emanuel, Catherine <[redacted] GRO>  
**Sent:** 23 October 2019 16:40  
**To:** Rodric Williams <[redacted] GRO>  
**Cc:** Lerner, Alex <[redacted] GRO>; Andrew Parsons <[redacted] GRO>  
**Subject:** RE: KEL documents [WBDUK-AC.FID26896945]

Hi Rod,

Board Subco resolved to proceed with the narrow review of the KEL extraction process, per the recommendation.

We do not think it should be done by Deloitte (as they are not independent) and have identified two possible alternative people – one from Alvarez and Marsal and one from FT Consulting, who Alex and Andy are speaking to (in the course of this afternoon, I believe) following which we will make a recommendation and get an idea of timescales.

Alex, Andy - do feed in if there have been developments since we spoke earlier. Also, has there been any further progress in relation to the review of the remaining KELs? Last look there were c 25 that needed a more detailed review.

Kind regards  
Kate

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**From:** Rodric Williams <[redacted] GRO>  
**Sent:** 23 October 2019 16:25  
**To:** Emanuel, Catherine <[redacted] GRO>  
**Subject:** RE: KEL documents [WBDUK-AC.FID26896945]

Hi – where did we get to with this, and the attached?  
Let's discuss if easier, Rod

**From:** Emanuel, Catherine [mailto:GRO]  
**Sent:** 19 October 2019 16:03  
**To:** Rodric Williams <GRO>; Ben Foat <GRO>  
**Cc:** andrew.parsons <GRO>; Lerner, Alex <GRO>; Watts, Alan <GRO>; Tom Beezer <GRO>; Sherrill Taggart <GRO>; Kenneth Garvey <GRO>; Lerner, Alex <GRO>  
**Subject:** RE: KEL documents [WBDUK-AC.FID26896945]

All,

I set out below a slightly revised version of Rod's draft update which has been discussed today between HSF, WBD and Tony Robinson QC. As any voluntary review risks producing adverse material (feeding into the C's case that the bugs disclosed thus far are the "tip of the iceberg") we wanted to be clear on the scope of Post Office's current disclosure duties before making any recommendations.

These are deceptively complex questions so happy to discuss if anyone has comments or queries. I am on

GRO

Kind regards

Kate

## Introductory Comments

- <!--[if !supportLists]--><![endif]-->The key legal risk underpinning these analyses is the ongoing duty in the GLO litigation to disclose adverse documents which come to Post Office's attention as a result of any voluntary form of review work.

## New KELs

- <!--[if !supportLists]--><![endif]-->Post Office has approached its review of the back-versions of the KELs in light of its legal obligations. In that regard, the KELs fall into two categories: (1) those relied upon by the Claimants at trial (658); and (2) those disclosed to, but not relied upon by the Claimants (14,000). The Claimants have requested back-versions of the first category of KELs but not the second (the Claimants have asked whether Post Office will pay the costs of reviewing the second category).
- <!--[if !supportLists]--><![endif]-->WBD has prioritised the review of the first category of KELs (i.e. the 658):
  - <!--[if !supportLists]--><![endif]--> Of these, the majority (i.e. 85%) contain no new information (or inconsequential new information). The remaining 15% (i.e. 94 ) do contain new information.
  - <!--[if !supportLists]--><![endif]-->WBD and counsel are assessing whether any of that new information could be of relevance to the Horizon Issues trial and we expect to have an update on progress by Tuesday's Subcommittee meeting.
  - <!--[if !supportLists]--><![endif]-->If any of the new information is relevant (or the Claimants take the position that it is relevant), the risk is that the Horizon trial is re-opened and/or the judgment is delayed. There is nothing that can be done to mitigate that risk.
- <!--[if !supportLists]--><![endif]-->In relation to the second category of KELs:
  - <!--[if !supportLists]--><![endif]-->Leading counsel has advised that Post Office presently has no obligation to review these documents.
  - <!--[if !supportLists]--><![endif]-->The key risk of doing so before the Claimants have asked for them is that we identify adverse documents amongst them which we are then obliged to disclose as adverse. This would be doing the Claimants' work for them. (If the Claimants do ask for these KELs, we are entitled to provide them without signposting which we consider to be adverse).

- <!--[if !supportLists]--><![endif]-->The legal advice therefore is that we should not review the 14,000 other KELs. We can revisit that decision if the Claimants ask for the documents, or Counsel's review of the 94 reveals information which warrants a wider review.
- <!--[if !supportLists]--><![endif]-->WBD and HSF will between them work together to deliver such a review if required as expeditiously as possible.

#### Audit

- <!--[if !supportLists]--><![endif]-->The question of whether to do an audit and, if so, what its scope should be is a difficult question; all the potential approaches create risk.
- <!--[if !supportLists]--><![endif]-->The legal team consider that, as a practical matter, any such audit should in the first instance be confined to a review of the process undertaken to extract the KELs.
- <!--[if !supportLists]--><![endif]-->The results of that audit can then inform a decision as to what further steps (if any) should be taken.

**From:** Emanuel, Catherine

**Sent:** 19 October 2019 11:01

**To:** 'Rodric Williams' <[REDACTED]> Ben Foat <[REDACTED]>

**Cc:** andrew.parsons <[REDACTED]> Lerner, Alex <[REDACTED]> Watts, Alan <[REDACTED]>

[REDACTED] Tom Beezer <[REDACTED]> Sherrill Taggart <[REDACTED]>

Kenneth Garvey <[REDACTED]>

**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 <[REDACTED]>

**Sent:** 19 October 2019 04:54

**To:** Ben Foat <[REDACTED]>

**Cc:** Emanuel, Catherine <[REDACTED]> andrew.parsons <[REDACTED]> Lerner, Alex <[REDACTED]>

[REDACTED] Watts, Alan <[REDACTED]> Tom Beezer <[REDACTED]> Sherrill Taggart <[REDACTED]>

[REDACTED]; Kenneth Garvey <[REDACTED]>

**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

- <!--[if !supportLists]--><![endif]-->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).
- <!--[if !supportLists]--><![endif]-->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

- <!--[if !supportLists]--><![endif]-->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).
- <!--[if !supportLists]--><![endif]-->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.
- <!--[if !supportLists]--><![endif]-->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.
- <!--[if !supportLists]--><![endif]-->WBD and HSF will nevertheless confirm resources to deliver such a review as required.
- <!--[if !supportLists]--><![endif]-->By way if further background since the last update, having now considered the previously undisclosed KELs:
  - <!--[if !supportLists]--><![endif]-->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 !supportLists]--><![endif]-->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

- <!--[if !supportLists]--><![endif]-->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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