POL00103654

Message

**From:** Watts, Alan [GRO]
on behalf of Watts, Alan [GRO]]
**Sent:** 25/09/2019 07:56:47
**To:** Alisdair Cameron [GRO]; Thomas Cooper [GRO]; Ken McCall1 [GRO]; Tim Parker [GRO]
**CC:** Ben Foat [GRO]; Rodric Williams [GRO]; Emanuel, Catherine [GRO]
**Subject:** Privileged & Confidential

All,

There are two issues we have been asked to bring to your attention outside of the weekly reporting cycle.

**Horizon trial: pages missing from closing arguments**

At the end of the Horizon trial Post Office filed a 545 page written submission setting out its closing arguments regarding each of the 29 bugs identified by the experts in the course of the proceedings. WBD have recently identified that 3 pages of Annexure 2 – relating to bug 16 – were inadvertently omitted from the final document. The missing pages are not central (bug 16 is not one of the more contentious bugs) but plainly it is unsatisfactory that the entirety of Post Office's submissions were not put before the Judge.

The Claimants are taking the position that Post Office must make an application to the Court seeking 'relief from sanctions' in order to rely on the missing pages. As a matter of law, it is probable that no such application is necessary (this is a developing area). However, in the interests of putting the missing pages before the Judge as quickly as possible in a way that is not procedurally controversial, WBD are making an application to Court. In all the circumstances, we think this is the right approach. It will: (a) have the effect of bringing the missing pages before the judge expeditiously; and (b) it may also help to portray the Claimants as uncooperative (by insisting on an application).

There is of course a risk that the Judge will be critical of the error made. He may also conclude that he cannot take account of the missing pages given that the error has come to light so late in the day. However, to our minds, these are not reasons not to make the application. Given the Horizon judgment could, technically, be handed down at any point, we have instructed WBD to file the application today.

**Further Disclosure**

The second issue concerns further disclosure which Post Office is obliged to make.

Post Office is presently implementing various operational changes in order to comply with the Common Issues judgment. One such change is to provide transparency around issues affecting Horizon. It is therefore providing its front line helpline staff with information on live issues affecting the system. This operational change has generated new documents about bugs in the system (some of these bugs have emerged but others would have been known to Fujitsu before the conclusion of the Horizon Issues Trial). In light of its ongoing duty to disclose adverse documents, Post Office has no real option but to disclose these documents.

The risks of doing so are: (a) that it brings more bugs to the attention of the Claimants (with an associated risk that the Claimants treat this - probably unfairly - as further evidence of concealment); and (b) that the Claimants contend that the operational changes in question could and should have been made at the outset. It will then be up to the Claimants to decide whether to communicate this new information to the Court.

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Given Post Office's obligations and the previous complaints made by the Judge about disclosure, we consider that this disclosure needs to be given now. If we delay, and the Horizon Issues judgment is handed down in the meantime, that would fortify the Claimants' arguments that matters are being concealed by Post Office. In the circumstances, we have instructed WBD to proceed with the disclosure today.

Do let me know if you have any comments or queries.

Regards

Alan