Appeal No. UKEAT/0053/20/DA (V)

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

Heard remotely
8 September 2020
Judgment handed down on 1 October 2020

Before

HIS HONOUR JUDGE SHANKS

(SITTING ALONE)

(1) VERIZON EUROPEAN WORKS COUNCIL (2) JEAN-PHILIPPE CHARPENTIER	APPLICANTS
THE CENTRAL MANAGEMENT OF THE VERIZON GROUP	RESPONDENT

JUDGMENT
FULL HEARING

APPEARANCES

For the Applicants	SIMON HARDING (of Counsel) Instructed by: Layton LLP 2 More London Riverside London SE1 2AP
For the Respondent	ANDREW BURNS QC (of Counsel) Instructed by: Lewis Silkin LLP 5 Chancery Lane London EC4A 1BL

SUMMARY

CENTRAL ARBITRATION COMMITTEE (CAC)

The Verizon European Works Council applied to the EAT under regulations 21 and 21A of the Transnational Information and Consultation of Employees Regulations 1999 (TICER) for the issue of penalty notices against Verizon's central management for breaches of TICER and the agreement between the parties which were the subject of findings by the CAC.

On the first, relating to a failure to properly inform and consult with the EWC about a proposed reorganisation involved redundancies in eight European countries between 21 December 2018 and 24 January 2019, the EAT issued a penalty notice in the sum of £35,000.

On the second, relating to a refusal to pay the expenses of the appointment of Mr Buckle as an expert to pursue the complaint to the CAC, the EAT found that there was no reasonable excuse shown for the initial refusal between 18 and 21 June 2019 and issued a penalty notice in the sum of £5,000.

HIS HONOUR JUDGE SHANKS

Introduction

1. I am told this is the first application of its kind; in the light of its subject matter I imagine it may also be the last. It is an application by the Verizon European Works Council (EWC) and its chairman, Jean-Phillippe Charpentier, for penalty notices to be issued by the EAT against Verizon UK Ltd, which is based in Reading and is the representative agent and "central management" in the European Union of the US telecommunications company Verizon Inc. The EWC seeks the penalty notices for breaches of the Transnational Information and Consultation of Employees Regulations 1999 (TICER) and of the agreement made between the parties under TICER dated 20 October 2016 (the Charter) which were found by the Central Arbitration Committee in a decision dated 9 October 2019.

Legal framework

2. The TICER Regulations implement EU Directive 94/45/EC and its replacement Directive 2009/38/EC, which is a Directive of the European Parliament and the Council "on the establishment of a European Works Council ... in Community-scale groups of undertakings for the purposes of informing and consulting employees." The relevant provisions of TICER for the purposes of this application are as follows.

3. Regulation 18A of TICER lays down Verizon's obligations in relation to the provision of information and consultation on "transnational matters":

> **"(2) The central management ... shall give information to ... members of a European Works Council ... in accordance with paragraph (3)**
>
> **The content of the information, the time when, and the manner in which it is given, must be such as to enable the recipients to –**
>
> **acquaint themselves with and examine its subject matter;**

> **undertake a detailed assessment of its possible impact; and**
>
> **where appropriate, prepare for consultation.**
>
> **The central management ... shall consult with ... members of the European Works Council ... in accordance with paragraph (5).**
>
> **The content of the consultation, the time when, and the manner in which it takes place, must be such as to enable a European Works Council ... to express an opinion on the basis of the information supplied to them."**

Regulation 19A provides:

> **"... the central management shall provide the members of a European Works Council with the means required to fulfil their duty to represent collectively the interests of employees of ... the Community-scale group of undertakings under these Regulations ..."**

4. Regulation 21 enables a complaint to be brought to the CAC by a European Works Council that Regulation 18A or the terms of an agreement made under TICER have not been complied with by central management and for the CAC, if it finds such a complaint to be well-founded, to make a decision to that effect. In the case of non-compliance with the terms of the agreement regulation 21(4) also provides that the CAC can make an order requiring the defaulter to take necessary steps to comply with the terms of the agreement. If such a decision is made, the European Works Council can make an application to the EAT for a penalty notice to be issued and, where such an application is made, paragraph (6A) provides that the EAT "... shall issue a written penalty notice to the central management requiring it to pay a penalty ... in respect of the failure." However, paragraph (7) provides:

> **"Paragraph (6A) shall not apply if the [EAT] is satisfied, on hearing the representations of the central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure."**

5. Regulation 21A makes similar provision to that in regulation 21 in relation to a failure by central management to provide the means required by the members of the European Works Council under regulation 19A. If the CAC finds there has been such a failure it may also make an order under regulation 21A(3) requiring the defaulter to take such steps as are necessary to comply with regulation 19A.

6. Regulation 22 makes provision about penalty notices to be issued by the EAT:

> **"(1) A penalty notice issued under regulation ... 21 or 21A shall specify—**
>
> **(a)the amount of the penalty which is payable;**
>
> **(b)the date before which the penalty must be paid; and**
>
> **(c)the failure and period to which the penalty relates.**
>
> **(2) No penalty set by the Appeal Tribunal under this regulation may exceed £100,000.**
>
> **(3) When setting the amount of the penalty, the Appeal Tribunal shall take into account—**
>
> **(a) the gravity of the failure;**
>
> **(b) the period of time over which the failure occurred;**
>
> **(c) the reason for the failure;**
>
> **(d) the number of employees affected by the failure; and**
>
> **(e) the number of employees of the Community-scale undertaking or Community-scale group of undertakings in the Member States."**

7. There is no guidance in the case law directly relating to setting the amount of a penalty under TICER but I have been helpfully referred to three EAT decisions relating to penalty notices issued under analogous provisions in the Information and Consultation of Employees Regulations 2004, namely **Amicus v MacMillan Publishers Ltd** [2007] IRLR 885, **Brown v G4 Security** [2010] All ER (D) 84 (Aug) and **Darnton v Bournemouth University** [2010] All ER (D) 22 (Oct).

Factual background and the findings of the CAC

8. At the relevant time Verizon's global turn-over was around US$ 139 billion and it had 5,599 employees throughout Europe.

9. The Charter made between the Central Management and the Verizon European Works Council dated 20 October 2016 contained the following relevant provisions:

"I Definitions

...

7. "Information" shall mean transmission of data by the employer to the EWC in order to enable them to acquaint themselves with the subject matter and to examine it; Information shall be given at such time, in such fashion and with such content as are appropriate to enable EWC to undertake in-depth assessment of the possible impact and, where appropriate, prepare for consultation.

8. "Consultation" shall mean the establishment of dialogue and exchange of views between the EWC and Central Management ... at such time, in such fashion and with such content as to enable the EWC to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related ... and within a reasonable time, which may be taken into account in the decision making process.

...

IV Composition of EWC

...

2. Each country covered by this agreement will have one EWC member.

...

V Structure and Functioning of EWC

1.The EWC will elect amongst its members a Select Committee which will consist of five EWC members ...

...

10.The EWC or the Select Committee may be assisted by an internal or external expert of its choice in so far as this is necessary to carry out its tasks.

VI Information and Consultation

1.The EWC will be informed and consulted on matters related to ... changes concerning organisation ... cut-backs or closures and reduction in force ... provided that these matters are of a transnational nature and affect the employees interest in all countries covered by this agreement or at least two of them.

...

3.Information and Consultation shall take place at a time when the decision on the proposed changes has not been finalized yet and can still potentially be changed, so that EWC can have an input that brings added value. Verizon will not start implementing a planned decision until the Information and Consultation process with the EWC has been finalized ...

4. ... In exceptional circumstances, the Select Committee shall be informed by Central Management as soon as possible in order to start the Information and Consultation process ...

...

6. After the first provision of information, at the request of the Select Committee, an Information and Consultation meeting can be held to complete the information and continue with the Consultation process ...

7.In the Information and Consultation process, the following parties shall be involved:

...

The Select Committee

EWC members of the affected countries covered by this Agreement

...

8. When the Select Committee has received adequate information and has had the opportunity to meet management in an Information and Consultation meeting, the EWC can issue an opinion statement on the subject matter within a reasonable timeframe, not exceeding 14 days. The receipt of the opinion statement and EWC obtaining a response from Central Management close the Information and Consultation process.

...

X Expenses

1.The reasonable expenses necessary for the functioning of the EWC ... will be borne by Verizon ...

XII Applicable Law and Dispute Resolution

...
2. In case of conflict, the EWC members and Central Management shall attempt to resolve their differences among themselves. In case this works out to be impossible, the parties ... agree to submit their differences ... to an arbitration panel composed of three arbitrators. One of the arbitrators is selected by the EWC and another one is selected by Central Management. Together these two arbitrators appoint a third arbitrator ..."

10. On 21 December 2018 Verizon's HR Director in Reading emailed the five members of the EWC Select Committee telling them they would be invited to a meeting to take place in London on 11 January (subsequently changed to 10 January) 2019; he stated that the obligation to inform and consult the EWC was behind the request but that the nature of the meeting was confidential and he was unable to share any detail at that stage. On 7 January 2019 the Select Committee were informed only that the issue that was to be shared resulted "from the write down in the value of the Oath asset" and they were reminded of the need to respect and abide by the confidentiality obligations of the Charter. It was common ground that the matters to be raised represented "exceptional circumstances" for the purposes of Art VI.4 of the Charter.

11. At the meeting on 10 January 2019 the Select Committee was informed of a proposed re-organisation arising from declining revenues and profitability in relation to Oath which would

lead to the termination of employment of a total of 216 employees in Denmark (9), France (21), Germany (92), Ireland (5), Italy (13), Spain (9), Sweden (3)and the UK (64). No representatives from those countries other than those on the Select Committee had been invited to the meeting. There was a presentation made which gave some detail about the proposals. The presentation document was headed "Legally Privileged. Strictly Private and Company Confidential. Not for Disclosure." It was stated that "global staff notifications" would generally be not before 24 January 2019 (described as "A-Day") and that termination dates would vary depending on country but would be likely to be "A-Day to A-Day plus 6 months." The agenda for the meeting after the presentation provided for general discussion between 10.45 and 11.45 and then a break until 12.15 ("opportunity for the 5 EWC Select Committee members to meet alone and discuss among themselves") followed by "Final clarifications" at 12.15 and "wrap up and next steps" at 12.30.

12. The Select Committee raised concerns about management's failure to properly inform the EWC about the proposed reorganisation and pointed out the need to consult representatives from countries impacted. On 16 January 2019 further information was supplied to the Select Committee by email in response to some issues raised on 10 January. On 18 January 2019 M Charpentier wrote again expressing concern about the tight schedule and the non-involvement of EWC members who were not in the Select Committee.

13. On 23 January 2019 Verizon made a press release about the reorganisation stating that it would impact "around 7% of our global workforce." The following day an email was sent to staff stating: "Today we will be initiating redundancy processes in various countries [in Europe]". At the hearing before the CAC, Verizon were unable to say when exactly a decision to go ahead with the reorganisation was made except that it was between 10 and 24 January 2019; and they

A accepted that it could not be shown that any feedback from the Select Committee was communicated to Verizon management in time to influence the decision and that there had not been adequate time for the EWC opinion statement provided for in Art VI.8 of the Charter (see CAC decision p 23).

B

14. On 18 February 2019 M Charpentier encapsulated the EWC's complaints about the process in an email stating:

C

> **"... the Oath reorganization (affecting around 216 people in Europe) was not carried out in line with the EU Directive.**
>
> **- only the select committee of EWC was informed**
>
> **- no consultation took place**
>
> **-we did not get copies of the deck presented, although requested – no cost saving breakdown, nor business case to support the reorg**
>
> D
>
> **...**
>
> **- impacted employees were informed without the required information and consultation with the EWC**
>
> **...**
>
> **Once again, this reorg is in total breach of European laws and the EWC intends to enforce its rights ..."**

E

15. The ensuing dispute between the parties led to the appointment of two arbitrators under Art XII.2 of the Charter; for some reason the provision for a third was dispensed with. A "narrative" 23 page complaint about Verizon's non-compliance with TICER and the Charter was prepared; I was told at the EAT hearing that this document was settled by the EWC appointed arbitrator, Sjef Stoop. Verizon responded in a more focussed five-page document which stated at para 10: "Verizon does not accept the EWC's complaints as being merited".

F

G

16. For some reason the arbitrators did not reach any conclusions as to the validity of the EWC's complaints but instead drew up a document entitled "Guidance and Recommendations ... regarding the operation of ... the Charter ..." dated 7 June 2019. This included recommendations

H

that the parties acknowledge that the Select Committee was not a substitute for the EWC, that in normal circumstances Central Management would provide written information to the Select Committee at least five days before a proposed meeting under Art VI.6 and that in normal circumstances the EWC representatives for the countries potentially directly affected would attend the meeting.

17. On 13 June 2019 Verizon responded to the recommendations by accepting them and welcoming the suggestion of a meeting to consider each other's response. They stated that the personnel responsible for Verizon's relationship with the EWC had recently changed and the new individuals were committed to developing a better working relationship with the EWC. They invited the EWC to continue to refrain from filing a complaint with the CAC. There was no admission that there had been any breach of TICER or the Charter.

18. On 17 June 2019 M Charpentier wrote to Verizon noting that the arbitrators had not addressed the actual breaches of the Charter and that management had not accepted that they were in breach and stating that this was a matter of concern to the EWC "... especially in the context where failures have been raised in the past ... only to see failures re-occur." The email concluded:

> **"After careful consideration ... we have appointed David Buckle from Cubism Law as our legal representative in this matter. He shall represent and advise the EWC regarding our complaints to the CAC. His cost shall be covered as per Article X.1 of [the Charter]."**

(Mr Buckle clearly had experience in relation to such complaints. He is now with Laytons LLP who act for the EWC in these proceedings.)

19. Verizon responded on 18 June 2019 stating they were disappointed that the EWC would be proceeding to the CAC. In relation to Cubism Law they stated:

> **"You have already prepared a detailed 23 page complaint with the assistance of Sjef Stoop, whose fees for this Verizon will already be paying. It is therefore not reasonably necessary for Verizon to pay for you to receive further assistance at this stage. Central Management notes that the CAC is also not a body where lawyers are required and that the CAC takes steps to ensure that an unrepresented party is not disadvantaged.**
>
> **However, we do wish to act reasonably. This means that if you do proceed to the CAC and consider that you need further assistance in due course, then we will consider any request that you make at that time.**
>
> **If you want to make such a request, then Cubism Law should provide a fixed-fee quote on a high-level basis for our prior approval. Verizon will not pay for any costs incurred without prior approval ...."**

20. M Charpentier responded the next day querying what was meant by "at this stage", given that the EWC intended to make a complaint to the CAC and they needed assistance in doing this and that Mr Stoop had been " ... part of an internal process". He also challenged the assertion that the CAC was not a body where lawyers were required, asking rhetorically whether that meant the central management would not be legally represented. Finally, the email stated that Mr Buckle had provided a fixed fee quotation of £15,000 plus VAT for proceeding to a CAC hearing including representation (on the basis of a one-day hearing).

21. Verizon responded on 21 June 2019 as follows:

> **"On instructing Cubism Law, Central Management considers that you do not reasonably require its assistance to proceed to the CAC.**
>
> **Commencing an EWC dispute is a free and simple process ... It requires almost nothing more than sending an email to the CAC with a copy of your arbitral submissions with which Central Management has already paid for you to be assisted. It is for this reason that if you ask us to pay Cubism Law's additional fees for commencing a claim then Central Management will refuse to pay them.**
>
> **As I have already stated, Central Management will give proper consideration to paying any fixed fee quote if and when necessary in due course.**
>
> **For example, if a CAC hearing is ultimately required then we will consider a fixed fee quote in respect of it such as "£2,500 (plus VAT) for attendance at CAC hearing". But it is unreasonable to ask us unconditionally to pay Cubism Law £15,000 ... at this stage irrespective of what assistance you might reasonably require."**

22. Notwithstanding Verizon's position, Cubism Law acted for the EWC without requiring payment and drafted Grounds of Complaint for the CAC. Complaints were made about the inadequate consultation in relation to the proposed reorganisation; there was also a complaint that

Verizon had refused to allow the EWC an expert of their choice (namely Cubism Law) as required by Art V.10 of the Charter and had refused to pay their expenses as required by Art X.1.

23. Verizon's response to the CAC accepted that some aspects of the complaints in relation to consultation were merited (in particular failing to hold a further meeting after 10 January 2019 and failing to invite other members of the EWC representing countries in which employees would potentially be affected) but sought a stay of the complaint and an informal meeting of the parties with the CAC "to assist the parties to build a new working relationship" (the informal meeting idea was later abandoned). In relation to the complaints relating to the expenses of Cubism Law, Verizon relied on a CAC decision from January 2016 involving a complaint against Emerson Electric Europe under TICER in which Mr Buckle and Cubism Law were also involved (I refer to this further below) and sought to strike them out without an oral hearing as being vexatious and having no reasonable prospect of success. They also stated that they had "... not, in fact, refused to pay for the EWC to be assisted in bringing its complaint ... and [would] consider any request for further assistance in due course ... notwithstanding that it is not legally required to fund any further assistance ... " (see para 42 at p99 in the Core Bundle).

24. The CAC hearing took place in London on 30 September 2019. Mr Buckle (now via Laytons LLP) was in attendance and Simon Harding of counsel (who also appeared before me) represented the EWC without requiring payment. Verizon was represented by David Hopper, a senior associate from Lewis Silkin LLP, and two senior in-house counsel attended. Although Verizon disputed some of the detailed complaints made by the EWC in relation to the process they accepted that they had failed to comply with their obligations in relation to information and consultation and formally apologised. Verizon maintained its refusal to pay any fees (whether Mr Buckle's or Mr Harding's). Mr Buckle informed the CAC that his fees in relation to the

proceedings totalled £10,000 plus VAT; he frankly informed them that he had instructed Mr Harding because of "his perception of his own competencies" (as the CAC put it at para 57 of their decision).

25. The CAC issued their decision on 9 October 2019. In broad terms they decided that:

(1) Verizon had failed to comply with the required information and consultation process before making a decision on the re-organization as required by regulations 18A(3) and (5) and the Charter (and in particular that they had breached the Charter by failing to inform and consult the "correct elements" of the EWC because representatives of all the affected countries were not involved);

(2) The complaint that Verizon had failed to allow the EWC an expert of their choice was not well-founded but the refusal to pay the expenses relating to the appointment of Mr Buckle to pursue a complaint with the CAC was a breach of regulation 19A and Art X.1 of the Charter on the basis that he was an expert whose assistance was necessary for the functioning of the EWC. They ordered Verizon to pay Mr Buckle's fees of £10,000 plus VAT within 21 days under regulation 21(4) and (5) (and the analogous provisions at regulation 21A(3) and (4)); nothing was ordered to be paid in relation to Mr Harding's fees.

Penalty notices

26. The EWC seeks the issue of penalty notices in respect of each of these decisions. I consider them in turn having regard to the provisions of TICER set out above.

Decision (1)

27. Verizon do not suggest that there was any reasonable excuse for the decision (1) failures and there is no dispute that I should issue a penalty notice. They do say, however, that the failures were purely procedural and that "the gravity of the failures was slight, the period of time over which they occurred was short, [and] the reason for them was accidental and well-intentioned...".

28. I am afraid I cannot accept this categorisation. It seems to me that the proposed re-organisation must have been in Verizon's mind well before 21 December 2018. It was to involve 216 redundancies across eight European countries out of a total European workforce of 5,599. Instead of seeing to it that the required information was supplied to the appropriate members of the EWC in sufficient time for a proper consultation before a final decision was made, on that date they called only the five members of the Select Committee to a meeting which took place on 10 January 2019 without disclosing anything of substance as to the reason for the meeting. At the meeting they gave a confidential presentation on the basis that notice of the proposals would not be given to staff before 24 January 2019 (which was also specified in the presentation as the earliest possible termination date). In the face of objections from M Charpentier about the lack of proper consultation they went ahead with a final decision on an unspecified date between 10 and 23 January 2019 without allowing for a proper opportunity for any meaningful input from the EWC (and in particular representatives of all the affected countries). This does not seem to me to be remotely consistent with the spirit of regulation 18A or the detailed provisions of the Charter. It seems likely that the reason for arranging the meeting for 10 January 2019, exactly 14 days before notice of the proposals was to be given to staff, was that that is the number of days allowed for the "opinion statement" mentioned in Art VI.8; that indicates to me an element of paying "lip service" to their obligations but no more.

29. I consider therefore that this was a significant failure of compliance by a very substantial undertaking, albeit relating to one redundancy exercise involving 216 employees out of a much larger workforce. Verizon rely in mitigation on the fact that they effectively admitted and formally apologised for the failure before the CAC. That is a relevant factor but it is somewhat undermined in my view by their apparent determination until the CAC hearing to avoid engaging with the specific complaints, as shown by their efforts to discourage the EWC from taking the case to the CAC, their request for a stay and their refusal to fund Mr Buckle's fees.

30. Having regard to those conclusions and the fact that the maximum penalty is £100,000 I have come to the view that the appropriate penalty in relation to decision (1) is £35,000.

Decision (2)

31. Verizon say that they had a "reasonable excuse" for refusing to pay Mr Buckle's fees and that in those circumstances no penalty notice can be issued on decision (2). The reasonable excuse put forward is that Verizon were relying on their understanding of the legal position based on statements of the CAC made in the **Emerson** decision to which I refer above and on guidance from the European Commission and the UK Government identified by their lawyers, Lewis Silkin. In relation to **Emerson** it is sufficient to quote the following passage from that decision:

> **"67. ... The Employer offered at the hearing to pay the reasonable fees of Mr Buckle of Cubism Law in attending the CAC hearing as an expert. The Panel notes these assurances by the Employer and does not, therefore, consider that it is required to make any additional finding in relation to the role of experts.**
>
> **68. The Panel was asked to decide whether the [Emerson Electrical EWC] Agreement and TICER provide a right to legal representation to pursue a complaint before the CAC. The CAC is not a body where lawyers are required, and the CAC takes steps to ensure that an unrepresented party is not disadvantaged. The Panel does not consider the failure to pay legal costs as such constitutes a breach of [the] Agreement or of regulation 19A of TICER."**

32. Mr Harding says that if Verizon are to establish such reliance as a reasonable excuse for refusing to pay the fees in question they must provide evidence from the individual decision

makers about their state of mind, which has not been done. Having regard to the express terms of regulation 21(7) (and the analogous regulation 21A(7)) that the EAT can be satisfied on the question of a reasonable excuse "... on hearing the *representations* of the defaulter ..." I do not accept this submission. The Tribunal will of course assess the strength of any representations having regard to such evidence as there is.

33. Although the **Emerson** case obviously turned on its own facts and the specific provisions of the EWC Agreement in question (and Mr Buckle's fees as an expert were in fact paid by the employer in that case) and the Panel's remarks at para 68 of the decision were specifically addressed to the question of a right to *legal* representation and the payment of *legal* costs *as such*, I would accept that that decision (and the other points raised by Lewis Silkin at the hearing before the CAC) could have given rise to a genuine and reasonable doubt as to Verizon's obligations under regulation 19A and Art X.1 of the Charter in relation to Mr Buckle's fees.

34. However, on a fair analysis of the exchanges set out at paragraphs 18 to 21 above, I do not accept that Verizon were in fact relying on any suggestion that Mr Buckle's fees were not payable in principle because they amounted to legal fees when they indicated a refusal to pay them on 21 June 2019. Although there was reference in one of Verizon's emails to the fact that lawyers were not required in the CAC, there was no suggestion that Verizon were unwilling to pay Mr Buckle's fees in principle; the objections raised were, first, that it was unnecessary to employ Mr Buckle from the start of the CAC proceedings because a detailed document had already been prepared by Mr Stoop and, second, that Verizon were unwilling to commit themselves in advance to a fixed fee of £15,000 plus VAT. As to the first point, I do not accept that it was reasonable to suggest that the proceedings should be started by using a document which had been prepared for a different (albeit closely related) purpose or that there was no need

for the expert who was going to assist with the CAC proceedings to be involved from the outset. As to the second point, it was Verizon who introduced the concept of a fixed fee quotation; the fact that ultimately Mr Buckle was prepared to accept £10,000 does not mean that the fixed fee of £15,000 was unreasonable and, in any event, Verizon did not respond to that proposal other than to say it was an unreasonable request. As the CAC say at para 56 of the decision, Verizon's approach inevitably had the effect of leaving either the individual members of the EWC who were taking the reasonable step of bringing CAC proceedings or their chosen experts at an unfair financial risk: that was not a reasonable approach, particularly coming from a very substantial organisation which no doubt had access to and would itself make use of legal assistance in connection with the CAC proceedings.

35. Mr Burns points out that Verizon's continued refusal to pay expenses relating to Mr Buckle's appointment at the hearing on 30 September 2019 was based on advice from Lewis Silkin as to the legal position and that this advice was based on the **Emerson** case and other points which were approved by Verizon in the email exchanges leading up to the hearing produced at pp 255-264 of the Supplementary Bundle (privilege having been waived). That may have provided a reasonable excuse for maintaining the position they had previously adopted when it came to the hearing but, as I have said, it is clear from the email exchanges in June 2019 that it could not provide an excuse for the refusal on 21 June 2019 and, in view of para 56 of the decision, it is clear that it was the refusal at that stage which the CAC considered to be the essence of the breach of regulation 19A of TICER and Art X.1 of the Charter.

36. Although I therefore reject the contention that Verizon had a reasonable excuse for refusing to pay the expenses relating to Mr Buckle's appointment, I accept that there is force in the points made in mitigation by Mr Burns. First, although there was a refusal to pay in the email

of 21 June 2019 it is right to say that Verizon left open the possibility of paying fees relating to the CAC reference at a later stage (although, as matters turned out, no such payment was offered in fact). Second, because Mr Buckle (and indeed Mr Harding) was prepared to act without payment his services were in fact provided in relation to the CAC proceedings and the EWC did not suffer any prejudice in relation to the presentation of the case. Third, Mr Buckle's actual fees were £10,000 plus VAT, one-third less than the fixed fee being sought in June 2019. Fourth, Verizon were ordered to pay that £10,000 plus VAT as part of the CAC decision and the payment was promptly made without any further challenge being raised.

37. Having regard to these points and to the concept of totality I consider that £5,000 is a sufficient penalty in respect of decision (2).

Disposal

38. In respect of CAC decision (1), for its failure to comply with regulations 18A(3) and (5) of TICER and the Charter between Verizon and the EWC in relation to the provision of information and consultation concerning the proposed reorganisation relating to Oath between 21 December 2018 and 24 January 2019 Verizon shall pay a penalty of £35,000 by 30 October 2020.

39. In respect of CAC decision (2), for its failure to comply with regulation 19A(1) of TICER and the Charter by refusing to pay the expenses relating to the appointment of Mr Buckle as an expert to assist in pursuing a complaint to the CAC between 18 and 21 June 2019, Verizon shall pay a penalty of £5,000 by 30 October 2020.