

Message

From: Jane MacLeod [GRO]
Sent: 18/09/2018 19:31:01
To: Rodric Williams [GRO]
CC: Mark Underwood [GRO]; Andrew Parsons [GRO]
Subject: Re: Group Litigation - Draft Update re: CMC on 19.09.18 - SUBJECT TO LEGAL PRIVILEGE

Thanks Rod, I'm happy with this. If you send to UKGI, I'll send to Paula & Al.

Jane MacLeod
 Group Director Legal, Risk & Governance
 Post Office
 [GRO]

From: Rodric Williams
Sent: Tuesday, September 18, 2018 6:05:26 PM
To: Jane MacLeod
Cc: Mark Underwood1; Andrew Parsons
Subject: Group Litigation - Draft Update re: CMC on 19.09.18 - SUBJECT TO LEGAL PRIVILEGE

Jane – I set out below a draft briefing note on tomorrow's hearing for our stakeholders. Please let me know if you have any comments.

I assume once finalised that you will send this to Paula, Al etc as you consider appropriate, and I will send to UKGI, but please let me know if you'd like to do something different.

Thanks, Rod

DRAFT BEGINS

Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

We will be in court tomorrow before the Managing Judge Mr Justice Fraser for a Case Management Conference, at which the following matters will be dealt with:

1. Post Office's Application for Security for Costs

- As previously reported, the dispute between the parties concerns:
 - o the amount of security (i.e. £2.5m offered on costs of £9m to the end of the November 2018 trial, as opposed to £6.7m sought); and
 - o the form in which it should be provided (i.e. the insurance policy offered by the Claimants, which could be set aside by the insurers, or a bond as sought so that the security is "as good as cash").
- Late last week, the Claimants offered to provide security by way of a bond, which largely resolves the dispute over form.
- As to amount, the Claimants advance a number of arguments to support their position that no more than £2.5m should be offered, including:
 - o Delay – the Claimants argue that no more security should be paid because of the time taken to hear the application. Post Office's position is that that argument is not supported by any legal principle, and in any event the time taken reflected the progress of the litigation and was agreed to by both the Claimants and the Court.
 - o Access to justice – the Claimants suggest that because the costs of providing security amounts to "hundreds of thousands of pounds", the Court must ensure it doesn't "hamper[] access to justice", i.e. that it doesn't place so high a price on this claim that it stifles it. The Claimants have not

however said (or even intimated) that the third party fund paying their costs is unable to finance the claim (including any security), which is typically required for a “stifling” argument to succeed.

- Post Office’s Counterclaim – the Claimants say that the £2.5m security they offer is reasonable because Post Office has made a generic counterclaim in this case (for the recovery of any shortfalls in the Claimants’ branches) which relies on the same issues advanced in their claim. Post Office’s position is that this is not material because the counterclaim is not responsible for any material part of the costs for which security is sought.
- More generally, we anticipate the Claimants to run in support of their case their narrative that Post Office is the “Big, Bad Corporate” which has treated the Claimant postmasters very badly, and that we are continuing to treat them unfairly by asking them to provide security (even if it will actually be paid by their funder).
- In terms of outcomes, Post Office has on one view already been successful with its application in that it has secured (by way of bond) security for £2.5m of its costs. Accordingly, a worst case scenario tomorrow is that we do not better that sum, leading the Claimants to argue that tomorrow’s hearing was unnecessary such that Post Office should pay its costs of the application (which they have stated to be £150k; cp. our costs of £98k).

2. The Timetable for the November 2018 Common Issues Trial

- The main issue for consideration here is whether the Court timetable should accommodate the application we have made to strike out the Claimants’ inadmissible evidence.
- As reported last week, on 11 September 2018 the Court listed our application for hearing on 10 October 2018. Given how close that is to the beginning of trial on 5 November 2018, our barristers believe that it will be a more efficient and proportionate use of the parties’ time and Court’s resources to deal with the application at the end of the first week of trial, when the Managing Judge has said hearing time will be available for applications.
- The Claimants’ position on this is that it is a question for the Court.
- Other issues which will be considered include the allocation of time between the for cross-examining witnesses, how long closing submissions will take, and the sequencing of closing submissions.

I will provide a further update on the outcome of tomorrow’s hearing following its conclusion.

DRAFT ENDS



2017 Winner of the Global Postal Award for Customer Experience

Rodric Williams

Head of Legal - Dispute Resolution & Brand
20 Finsbury Street
London EC2Y 9AQ

GRO

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.
