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Subject: Horizon Issues Judgment: Appeal and Costs [WBDUK-AC.FID124042615]
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Importance: Normal

Attachments: _DOC_159182544(1)_Note_on_potential_appeal_of_Horizon_Judgment_-_09_12_19.PDF;
_DOC_159164820(1)_Note_on_potential_appeal_of_Horizon_Judgment_-_v2_-_clean.DOCX

Inline-Images: imaged66db4.PNG; imageb86dec.PNG; image45a230.PNG

Rodric, Ben

Please find attached Counsel's advice on the merits of an appeal of the Horizon Issues Judgment (the PDF document), together with a copy of Counsel's previous underlying research on appeal options (the Word document).

In summary, Counsel's view is that Post Office would be unlikely to get permission to appeal. Counsel consider that there is one potential ground of appeal that has a realistic prospect of success, namely that the Judge's conclusions are wrong that Legacy Horizon and Horizon Online were not robust on the basis that he is in contradiction with the expert evidence. However, there is very little prospect of Fraser J giving permission to appeal and similarly little prospect of Coulson LJ giving permission to appeal. Post Office would therefore be betting on the appeal going to a Lord Justice other than Coulson LJ, which seems very unlikely.

In terms of the Horizon costs, Counsels' view is that the most likely outcome is that the Judge will award the Claimants all, or very substantially all, of their costs of the trial. The Judge may be interested in making an order similar to that for the Common Issues Trial and cap the Cs recoverable costs because Post Office did not lose on all issues, as some of the Horizon Issues were broadly agreed before the trial. These issues were however minor and would lead to only a reduction of around 10% - 20% at best.

The Claimants' Horizon costs are £3.4m, as per their letter to the Court in November 2019. This is nearly within their costs budget of £3.3m. On the usual Court rules, these costs are likely to be recoverable in full on the standard basis (that they are reasonable and proportionate), subject to a detailed line by line assessment. That assessment will happen at the end of the litigation and Post Office will likely to be ordered to make an interim payment of between 60 - 90% (£2m - £3m) now. That payment is due typically 21 days after ordered.

The Claimants may attempt to recover their costs on an indemnity basis (which are ordered to penalise a party's conduct). They tried this on the Common Issues judgment and the Judge refused. They might try it again but we don't believe the Judge will order indemnity costs. In any event, normally standard costs recover about 65% of actual costs and indemnity costs around 90% of actual costs. However, given that the Cs costs are within their budget, they are likely to recover 90%+ of their costs on the standard basis anyway. There is therefore little financial incentive for the Cs to pursue indemnity costs.

We recommend that Post Office looks to settle the Horizon costs now by agreeing to pay the Cs costs assessed on the standard basis with a 75% upfront payment (being £2.5m). First, we think it likely that Post Office will lose any fight on costs. Second, a fight of costs will likely result in further adverse comments from the Judge. Third, that costs hearing could be held over until January, which gives the media a second bite at the cherry on Horizon. If Post Office agreed to pay the Cs costs now without seeking any reductions, the costs issues may be resolved without a hearing at all, or perhaps as a purely administrative matter at the Judgment handing down on 16 December.

I should be grateful for your thoughts on this approach. Does this need to go to the Board SubCo on Tuesday?

Please let us know if you have any comments or questions.

Kind regards

Jonny

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