

Message

From: Jane MacLeod [GRO]
Sent: 19/09/2017 21:21:32
To: Thomas P Moran [GRO]
CC: Andrew Parsons [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ad9ed344815e47e4aaa3c0e7e1740919-Andrew Pars]; Rodric Williams [GRO]
Subject: Re: Board briefing re Postmaster Litigation CMC Options CONFIDENTIAL AND SUBJECT TO LEGAL & LITIGATION PRIVILEGE [BD-4A.FID26896945]

Thanks Tom

On the DMB point, I'd like to include it. We are not suggesting that any of these options are palatable or even practical (e.g. suing FJ or re-procuring Horizon), simply that they are in the mix of things that we could consider to address the challenges of an adverse legal outcome.

Now that I have both sets of comments, I will circulate to everyone else. I have suggested to Paula that we re-brief her, Al and Kevin on Thursday/Friday (she's not in the office tomorrow).

Thanks to you both for the speedy turnaround.

Jane

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

Sent from my iPad

On 19 Sep 2017, at 22:02, Thomas P Moran [GRO] wrote:

Jane (cc Andy and Rod)

Hi, my minor additions, mainly in the appendix. My main point is that I don't think these are all mitigations, they are more accurately described as our potential responses to these findings.

I have removed the 'increase DMB numbers' point...

The strongest point I've yet seen on this is your point below: if we thought the 'existential' or other risk s were so material that they could not be mitigated, then we would at that point need to consider settlement discussions, for which we would need the Board's approval in any event.

IF we thought we would/will lose on the contract point we would be seriously working through how to settle this. That is not my view nor the view of those who've been advising us.

ON the timeline, I think we should speed it up and send this note to the steering group now and get their comments back by c.o.p. Thursday so you can send it to the relevant GE members on Friday.

Yours

Tom

From: Jane MacLeod
Sent: 19 September 2017 21:23
To: Andrew Parsons <[REDACTED] GRO>; Thomas P Moran
[REDACTED] GRO
Cc: Rodric Williams <[REDACTED] GRO>
Subject: RE: Board briefing re Postmaster Litigation CMC Options CONFIDENTIAL AND SUBJECT TO LEGAL & LITIGATION PRIVILEGE [BD-4A.FID26896945]

Thanks – I'm happy with the suggested mitigations – at this stage they are 'possibles' not 'desirables'!

I'll add the burden of proof paper to my bedtime reading [REDACTED] IRRELEVANT

<image001.png>

Jane MacLeod

Group Director of Legal, Risk & Governance
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile number [REDACTED] GRO

From: Andrew Parsons <[REDACTED] GRO>
Sent: 19 September 2017 21:10
To: Jane MacLeod <[REDACTED] GRO>; Thomas P Moran
[REDACTED] GRO
Cc: Rodric Williams <[REDACTED] GRO>
Subject: RE: Board briefing re Postmaster Litigation CMC Options CONFIDENTIAL AND SUBJECT TO LEGAL & LITIGATION PRIVILEGE [BD-4A.FID26896945]

Jane

I have no further comments on the body of the note.

In relation to mitigations, I've add a few more in the attached. Some of these may be politically unacceptable so feel free to delete.

I've attached Counsel's note on "Burden of Proof". This was commissioned as an internal research note in order to underpin the positions adopted in the Defence. It's not really a proper piece of advice as it doesn't reach a full conclusion – hence why it hasn't been circulated to POL. However, paras 2(a) or 2 (c) come closest to providing usable quotes.

2(a) - The starting point is that the legal burden of proof rests with the party that asserts the relevant fact as an element of its cause of action. It follows that where a Claimant positively asserts as part of a claim that a shortfall was not due, he or she will be required to prove this by, for example, showing that it was caused by a bug and/or error in Horizon. Similarly, where Post Office asserts a Counterclaim that relies on the shortfall having been due, it will be required to prove the facts implicit in that assertion (i.e. that there was a loss for which the Subpostmaster was liable under the contract).

2(c) - Fortunately, Post Office is likely in this instance to be able to rely on a presumption that the cash declarations and accounts prepared by Subpostmasters were correct. It will be for the Subpostmaster to show that those accounts are mistaken. This removes much of the practical significance of the legal burden being on Post Office in these circumstances.

Kind regards
Andy

Andrew Parsons

Partner

Bond Dickinson LLP

<image002.jpg>

Direct:

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GRO

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<image003.png> <image004.png>

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From: Jane MacLeod [mailto:jane.macleod@**GRO**]

Sent: 19 September 2017 20:29

To: Thomas P Moran; Andrew Parsons

Cc: Rodric Williams

Subject: Board briefing re Postmaster Litigation CMC Options CONFIDENTIAL AND SUBJECT TO LEGAL & LITIGATION PRIVILEGE

All

Attached is the revised paper following your comments this morning.

The main change is that I have retained the summary in Appendix 2 of the implied duties which Freeths are seeking to impose and have included against each group of duties some possible mitigations. I have then in paragraph 18 of the paper stated that we will work on these (and other) mitigations and bring these back to the Board ahead of any hearing on the substantive points. My suggestion here is that if we thought the 'existential' or other risks were so material that they could not be mitigated, then we would at that point need to consider settlement discussions, for which we would need the Board's approval in any event.

Would you please consider whether there are any other 'mitigations' that we should include at that point?

Following your input, I suggest we discuss the mitigations with the rest of the steering group on Friday, and then re-brief Paula, Al and Kevin. I suggest that the paper should be circulated to Paula, Al and Kevin however I would not distribute it to the Board, but would use it as a briefing paper.

Andy – is there any guidance from Tony on the 'burden of proof' issues, that we could include in the voiceover to the Board?

As ever, all suggestions gratefully accepted.

Jane

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Jane MacLeod

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