

Angela Van-Den-Bogerd

From: Jane MacLeod
Sent: 09 July 2018 18:31
To: Tim Parker; Ken McCall [GRO] Cooper, Tom - UKGI; Paula Vennells; Alisdair Cameron
Cc: Veronica Branton; Andrew Parsons; Rodric Williams; Mark Underwood [Angela Van-Den-Bogerd]
Subject: Post Office Limited - Board Litigation Subcommittee CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD
Attachments: DRAFT Contingency Planning - Draft Risk Assessment Table for Board Litigation Subcommittee 10.07.2018.docx
Importance: High

All

With apologies for the late circulation, attached is the draft risk assessment which we have prepared to assist tomorrow's briefing on contingency planning. This is still a work in progress and we will take you through:

- Our approach to risk assessment
- Initial work that has been undertaken on potential mitigating actions
- Issues and timetable.

Please note that we are scheduled to update the Board on this work at the end of July, and have also been requested to provide an update on contingency planning to Alex Chiselm (Permanent Secretary of BEIS) and Andrew Griffiths MP (Minister responsible for Post Office) which is currently scheduled for 10 September. To that end, it would be helpful to get your thoughts on the proposed approach.

Hard copies will be available for those at the meeting.

Kind regards,

Jane



Jane MacLeod

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Angela Van-Den-Bogerd

From: Jane MacLeod
Sent: 10 July 2018 10:18
To: Angela Van-Den-Bogerd
Subject: Fwd: Speaking Notes - Contingency Planning - CONFIDENTIAL & SUBJECT TO LEGAL PRIVILEGE

Angela

These are my speaking notes for the Contingency planning piece today.

Jane MacLeod
Group Director Legal, Risk & Governance
Post Office

GRO

From: Jane MacLeod
Sent: Monday, July 9, 2018 10:46:30 PM
To: Jane MacLeod
Subject: Speaking Notes - Contingency Planning - CONFIDENTIAL & SUBJECT TO LEGAL PRIVILEGE

Following receipt of Counsel's preliminary Merits Opinion in early May, we have been looking at the risks of the litigation.

At the heart of the litigation are two key principles:

- is the contract between agents and Post Office a relational contract?
- should additional terms be implied into that contract?

PO has proposed that 2 additional terms should be implied. Claimants have requested a further 21, although these break down into parts.

Nothing we do now can reduce the retrospective impact. Accordingly the contingency planning is to prevent further claims being made in respect of the current/future situation. Key question is cost & complexity of implementation of change. There are legal risks of making some changes (eg contract changes) ahead of litigation. Operational improvements need to be carefully considered to ensure they can be independently justified.

Contingency is to look at likelihood (legal interpretation) and impact (business assessment) of each of these terms being implied. In parallel and using lessons learned during mediation process, we are reviewing a wide range of operational aspects of our interaction with agents.

Input required:

- while we will review all claims and develop contingency plans, those that we should be most concerned about have both reasonable probability and reasonable impact (both =3 and above)
- will do more work and bring this back to Board at end of July
- update to UKGI/BEIS on 11 September - how to proceed?

Likelihood**2 terms @ 5 (certain):**

- our 2 proposed terms
- theirs - exercise of power :
 - relating to (i) contract variation and (ii) withholding remuneration during suspension.
 - honestly and for purpose intended/created to achieve
 - not capriciously or arbitrarily

Risk - remuneration during suspension. We are reviewing how decisions are made, what guidance is provided and what the general practice is.

2 terms @ 4 (likely to lose)

- Training - duty to provide adequate training and support and in particular where new working practices introduced, new systems introduced and where new services required to be delivered.

Risk - provide enhanced training. We are reviewing the training currently offered to ensure it is fit for purpose.

- Suspension - not without reasonable and proper cause; and not when PO has breached its duties

Risk - We are reviewing how decisions are made, what guidance is provided and what the general practice is.

3 terms @3 (50/50)

- PO to supply support services (back office accounting, helpline, training etc) to agents with Reasonable skill & care

Risk - We are reviewing how services how provided to ensure they are of suitable standard.

- If any of the standard clauses in the contract were found to be onerous and unusual, they would be unenforceable unless PO had specifically brought them, to the agents attention.
- includes liability for losses, postmaster as agent, in some limited cases PO as agent for the postmaster; suspension (as above)
- assistants - what responsibility did the agents have to train assistants? Do assistants have 3rd party rights?

There is more work to do on each of these, however overall we believe that the impact of these clauses being implied into the contract is likely to be manageable.

Impact**1 term @ 5 (certain)**

- shortfalls (no 12)
 - reverses current responsibilities
 - mitigations options (Angela)
 - IT changes
 - contract changes
 - process changes

More work to be done on this one. however likelihood is low

1 term @ 4 (certain)

- 'relationship' (11)

12 term @ 3 (material impact, could be detrimental)

- exercise of powers
- quality of Horizon
- communication of problems in horizon
- communication of problem in branches
- communication of information about shortfalls
- training
- supply of services with reasonable care & skill (Sale of Goods Act)
- onerous or unfair terms
- subpostmaster as agent; agents bear burden of proof
- termination requires reasonable cause
- 12 months notice for termination for cause
- training of assistants
- therefore there are only 3 that are both at least 50/50 likelihood and have a material impact/could be detrimental (highlighted in yellow)

Jane MacLeod
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Post Office Limited

GRO

