
From: Rodric Williams [GRO]
Sent: Thur 08/11/2018 10:28:14 AM (UTC)
To: Jane MacLeod [GRO]; Mark R Davies [GRO]; Alisdair Cameron [GRO]; Paula Vennells [GRO]
Cc: Mark Underwood1 [GRO]; Ben Foat [GRO]; Angela Van-Den-Bogerd [GRO]
Subject: Re: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Thanks Paula.

David referred the Judge back to our written submissions several times, which from memory the Judge said he would go back and revisit.

The opportunity to address the issue again may arise as we move through witness evidence. It will definitely do so when it comes to closing submissions, when we will again prepare written submissions, which we will then have two full days to speak to.

If ultimately we believe the Judge gets this issue wrong, we can look to appeal.

In short therefore, we still have a number of further "bites of the cherry".

I hope this answers your question. Please let me know if you need anything further.

Rod

Get [Outlook for Android](#)

From: Paula Vennells
Sent: Wednesday 7 November, 23:41
Subject: Re: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD
To: Rodric Williams, Jane MacLeod, Mark R Davies, Alisdair Cameron
Cc: Mark Underwood1, Ben Foat, Angela Van-Den-Bogerd

Thanks Rod.

What happens if we think the judge has misunderstood or misinterpreted or simply not read our submission properly?

Get [Outlook for iOS](#)

From: Rodric Williams [GRO]
Sent: Wednesday, November 7, 2018 11:09 pm
Subject: RE: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD
To: Paula Vennells [GRO], Jane MacLeod [GRO], Mark R Davies [GRO], Alisdair Cameron [GRO]
Cc: Mark Underwood1 [GRO], Ben Foat [GRO], Angela Van-Den-Bogerd [GRO]

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

All - further to my email below, today's trial Opening (which was well attended by Claimants, UKGI's General Counsel, and members of the press) went mostly smoothly:

- Patrick Green QC for the Claimants went first, and spent most of his time describing perceived imbalances between Post Office and postmasters with respect to:
 - o the contract (which is set on standard, non-negotiable terms);
 - o the mechanics of branch operations (in particular how Post Office responds to losses, how big they can be, and how a postmaster can challenge them); and
 - o information (in particular around how Horizon operates).
- He did not discuss the law the Judge must apply to decide the Common Issues. This was surprising given they are essentially legal issues, as opposed to factual ones (such as whether something was or was not said, or did or did not happen).
- He sought to diminish the “existential threat” to our current network operations if the postmaster relationship is re-characterised as the Claimants’ contend, basically saying we shouldn’t rely on an unfair way of operating to support our interpretation of how the relationship must work.
- Finally, as anticipated he sought to criticise us for the way we have explained our case on implied terms. The Judge did not however show any interest in this attack.
- David Cavender QC then spoke for us, and focussed almost entirely on the law (he did however acknowledge that the Claimants’ feel genuinely aggrieved).
- Unlike Patrick Green’s opening, the Judge actively engaged with David, in particular with respect to the law on:
 - o interpreting the express written terms of the postmaster contracts;
 - o whether the postmaster contracts can be legally classified as “relational”, and the consequences of such a classification (e.g. would they have implied into them duties of good faith); and
 - o implying additional terms into the postmaster contracts.
- The one issue where we were not as clear as I would have liked us to have been was the discussion around the clauses which make postmasters liable for branch losses.
- Although there was quite a bit of confusion between David and the Judge on how we say those clauses apply, David kept drawing the Judge back to our written submissions on this issue where we are much clearer. We will however need to focus on this when we close our case at the end of the trial to make sure the points on this important part of our case are landed.

Overall, today was fairly neutral, with neither side landing a surprise or knockout blow. If anything, the legal basis for the Claimants’ case still remains unclear, a point the Judge acknowledged at the end of the day when he decided that we would “go last” in closing the trial, i.e. after the Claimants had had their final opportunity to put this to the Judge, to which we could then respond.

Tomorrow, David will start cross-examining the six Lead Claimants, starting with Alan Bates. This should then run through until next Wednesday 13 November (with the Court not sitting on Friday 9 November).

David has however flagged that he may need extra time if he has to address fully the matters in the Claimants’ evidence which were not struck out.

I hope this has been helpful. Please let me know if you require anything further.

Kind regards, Rod

From: Rodric Williams

Sent: 06 November 2018 19:09

To: Paula Vennells <[REDACTED]>
Cc: Jane MacLeod <[REDACTED]>; Mark R Davies <[REDACTED]>;
 Mark Underwood1 <[REDACTED]>; Ben Foat <[REDACTED]>;
 Alisdair Cameron <[REDACTED]>

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

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

Paula,

Ahead of tomorrow's Opening Submissions in the Group Litigation Common Issues trial, I promised you some headline bullet points on what the parties may say, based on the lengthy written legal submissions already filed with the Court:

Before the Claimants "open", we will probably have to deal with some incidental case management issues, including agreeing a process for addressing the Judge's plans for a third trial in May 2019.

Patrick Green QC will then speak to open the Claimants' case. We anticipate his key themes to be that: it is unfair to place significant legal burdens on postmasters when they are not in full control of all branch operations. the postmaster contracts should be interpreted in a wider context which reflects what the Claimants say actually happened when running a branch. additional terms need to be implied into the contracts to reflect better the long-term, interdependent relationship between Post Office and postmasters, and to counteract an imbalance of power in favour of Post Office. Post Office has been evasive in explaining our case on implying terms into the postmaster contracts.

(In our written submissions, we anticipated the Claimants would make the final point, and sought to neutralise it given the lengths we went to in correspondence, formal court documents and in meetings to explain our case.)

David Cavender QC will speak for us in the afternoon. His main themes will be that: the law is clear: the words on the page of the contract should be followed, with extra terms implied only when "necessary". the Claimants have not explained why it is necessary to imply into the contract the terms they seek, whether by reference to the text of the contracts or any commercial imperative. the Claimants instead try to re-write (with hindsight) the contracts for their own benefit, in a manner which goes against well-established legal principles. fundamentally, postmasters are business people and agents of Post Office, who are in charge of their branches and have control of branch operations. There is therefore nothing unfair about making them responsible for their conduct of branch operations, which includes making them responsible for branch losses.

The legal team are well prepared and ready for tomorrow. I will provide an update following the conclusion of tomorrow's proceedings, but please let me know if you require anything further in the meantime.

Kind regards, Rod



2017 Winner of the Global Postal Award for Customer Experience

Rodric Williams

Head of Legal - Dispute Resolution & Brand

20 Finsbury Street

London EC2Y 9AQ

T: **GRO**

E: **rodric.williams** **GRO**

