

Termination Decision Rationale - Legal Assurance

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Legal Assurance - Purpose

The purpose of the assurance review undertaken by POL Legal is to:

- Determine any risk associated with Post Office taking a decision to terminate a postmaster's agreement, assessed as either low, medium or high.
- This review will look to ensure that, as presented by the content in the Rationale Document:
 - i. it has complied with the process of investigation (specifically in retaining all evidence gathered through the investigation and providing same to the postmaster).
 - ii. whether the decision being taken is at risk of being challenged for being arbitrary, irrational or capricious
 - iii. whether the decision is procedurally flawed

They are not here to make the decision for us, simply to identify any risk in the proposed decision and provide advice.

Legal Assurance – Points of Note

Each part of the rationale will be reviewed – Branch Details, Background, Meetings, Case Investigations, Breaches of Agreement, Considerations and Decision & Rationale. In each of these sections please consider the following:

- the person reviewing is unlikely to have knowledge of Post Office processes so the rationale needs to be clear and factual, expanding on terms or references that may need further explanation
- be careful and clear in the use of language
- make the summary of events very clear, putting a timeline or subheadings is very useful in setting out events in a chronological order
- Make sure spellings are consistent through the document (for example postmaster names)

They will also check against the relevant Preface and Standard Conditions – it is important that any references in the rationale match any references in the agreement (for example, 'Associated Retail' should mirror what it says in the Preface or if there is a difference explain why).

Legal Assurance – Contractual Breaches

In referencing the provisions of the agreement it is helpful to specify which Part of the Standard Conditions these clauses come from, for example instead of

3.6.3 *maintain an accounting system, prepare, sign and maintain financial statements and accounts, record Transactions and maintain all records in accordance with the provisions contained in the Manual, in particular paragraphs 13.1 to 13.3 (inclusive) and 14.4*

Use

Part 2 - Operational Requirements

3.6 The Operator shall:

3.6.3 *maintain an accounting system, prepare, sign and maintain financial statements and accounts, record Transactions and maintain all records in accordance with the provisions contained in the Manual, in particular paragraphs 13.1 to 13.3 (inclusive) and 14.4*

Legal Assurance – Contractual Breaches

The contractual breaches as presented in the rationale will be reviewed and commentary provided as to whether the threshold for a repudiatory breach has been met. It is important to be clear why the breach is repudiatory and in the analysis why something not capable of remedy. It is important to be relevant in the commentary against the suggested breaches. As an example:

During the meeting on the XXXXXXXXXXXX, acting on behalf of the Operator, explained that they had inflated both the cash declarations and Trading Period balance in order to conceal the discrepancy in branch. A review of the horizon data has shown that the figures declared in both the cash declarations and Trading Period end balancing have been increased so that the branch is not showing a shortfall. Accordingly, the Operator has not maintained an accounting system in line with operational instructions (in that there are no instructions to inflate the cash on hand) and therefore presents a repudiatory breach which is not capable of remedy in pursuant to clause 16.2.1, in reliance on clause 16.2.15 which cannot be remedied.

Legal commentary - This clause doesn't say very much (if anything) about why the breach is "repudiatory" and incapable of remedy, which it would have to be if it is to be relied upon as a ground for immediate termination pursuant to 16.2.1 and 16.2.15. Unlike the other clauses, this isn't deemed to be a repudiatory breach so some further analysis would help here.

During the meeting on the XXXXXXXXXXXX, acting on behalf of the Operator, explained that they had inflated both the cash declarations and Trading Period balance in order to conceal the discrepancy in branch. A review of the horizon data has shown that the figures declared in both the cash declarations and Trading Period end balancing have been increased so that the branch is not showing s shortfall. Accordingly, the Operator has not maintained an accounting system in line with operational instructions (in that there are no instructions to inflate the cash on hand). The extent to which the accounts have been inflated (both the value and the length of time they have been inflated for) it is deemed that this is a repudiatory breach which is not capable of remedy in pursuant to clause 16.2.1, in reliance on clause 16.2.15 which cannot be remedied.

Legal Assurance – Decision & Rationale

In addition to demonstrating the contractual grounds for termination it is also very important to demonstrate why we should terminate ("we can terminate but should we terminate"), this needs to be demonstrated in the 'rationale to support recommended decision'. We must ensure that termination is necessary and alternatives to termination have been considered. After establishing the contractual grounds for termination we must consider whether, acting in good faith, we should terminate the Agreement, as examples:

Taking into account the information available, and having considered all alternative options, the recommended course of action in this case, is for the Agreement with XXXXXXX to be terminated with immediate effect. This is considered necessary in the circumstances as there has been a repudiatory breach of the Agreement by the Operator and, having considered, acting in good faith, whether it should terminate the contract or not, Post Office has concluded that it must do so. The grounds for termination, rationale and consideration of the decision to terminate are outlined below.

Given the significance of the issues identified, and the evidence of the breaches of the Agreement over a sustained period, it is determined that Post Office Limited has the right to terminate the Agreement. When considering alternative to termination, the options are to reinstate or to terminate by notice. Both would mean Operator continuing to be responsible for the branch and both would bring with them a significant degree of risk to Post Office Limited. It has been evidenced by the fact that the Operator did not address the issues highlighted to them through various Branch Assurance/Branch Assurance Support visits and Area Manager intervention together telephone interventions from Post Office Cash Management, there is little confidence that the Operator would address these issues now.