

Message

From: Jane MacLeod [GRO]
on behalf of Jane MacLeod [GRO]
Sent: 14/02/2019 22:30:12
To: Paula Vennells [GRO]; Rob Houghton [GRO]
CC: Mark R Davies [GRO]; Rodric Williams [GRO]; Alisdair Cameron [GRO]
Subject: Re: Postmaster Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Thanks Paula,

It would probably be better to discuss this face to face as there are a number of nuances, however to comment on a couple of points:

- Rob has already fed into the legal strategy - Tony liked Rob's metaphor of the 'motorway' and is proposing to use it as part of the opening arguments.
- There has been significant work undertaken on the new points raised in Coyne's report, to understand their import and while we have not bottomed all of them yet, it's likely that we will be able to contextualise these based on the materials already disclosed, and the Counsel team are in a much better position than a week ago (and to be fair to Tony, he did warn us last week that it was probably the worst time to have a briefing on Coyne's report as they didn't at that point have anything to contextualise the new issues)
- I am not at all concerned about Nick Wallis - we did not try and prevent Ian Henderson's evidence, but we have successfully narrowed it. This one is easier to explain verbally!
- we can take you through the legal arguments about limitation separately, but there is a reasonably high bar for the claimants to meet, and to date they have not provided any details as to the basis on which they believe the limitation rules should not apply. They will need to fully plead these over the next few months.
- Given the sequencing, I think the Board discussion next week needs to focus on the Horizon trial, and once that is over we can then start to brief them on the shape of the rest of the year.

If you've time tomorrow, I can update you on these points.

Jane

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

From: Paula Vennells [GRO]
Sent: Thursday, February 14, 2019 9:26 pm

To: Jane MacLeod; Rob Houghton

Cc: Mark R Davies; Rodric Williams; Alisdair Cameron

Subject: Re: Postmaster Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Jane thanks for this.

As always, a well constructed and easy to follow email - a skill much appreciated in matters so complex.

Thank you for expediting Rob's meeting with the QC.

I said to Rob earlier this week, whilst he can't (and mustn't) steer the legal strategy, he should understand and be comfortable with the approach being taken and feel that he has had the opportunity to feed in any thoughts or challenges. That may or may not be welcome news to our legal advisers but it's important in two respects: managing internal board confidence and secondly, because he knows what he's talking about.

The board have great confidence in both of you; we have to know that you have worked well together and that we have had the opportunity to incorporate Rob's views into the process. If you disagree that is fine, and the final call must be legal.

On the specifics of your note:

1) have I understand that we don't need to submit additional evidence? You flagged on Monday that might be necessary, as the supplementary statement from Coyne contained new news.

2) Rod flagged it could be tight to prepare in sufficient detail in the time available: we had a conversation about having the sense to challenge the timing of the trial if that was the case. Are we really sure that timing is ok?

3) why would we be so far apart from Nick Wallace on our interpretation of the judgement re the Ian Henderson evidence? What was the background: did we try to stop him being called?

We should not expect he will be anything other than 'opinion'.

4) can we talk about how we are preparing our witnesses

5) 3rd trial: how high is the bar, if the claimants need establish, deceit, concealment *ormistake*? Mistakes happen all the time in business. The approach of the claimants' lawyer in the common issues trial (and now in the expert witness trial) seems to have been to show how easy it is to have confusion and error.

I expect Tony will be challenged on this next week by the sub-committee.

Best,

Paula

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From: Jane MacLeod <[GRO]>

Sent: Thursday, February 14, 2019 5:45 pm

To: Paula Vennells; Alisdair Cameron

Cc: Rob Houghton; Owen Woodley; Debbie.K Smith; Mohinder Kang; Mark R Davies; Veronica Branton; Rodric Williams

Subject: Postmaster Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

All

We have had 2 Court hearings this week in relation to the Postmaster Litigation. Key points were:

Common Issues Judgement

- The judge advised us this morning that he is on track to deliver his draft judgement at the end of February – although he flagged that this may slip a few days. So my expectation is that we will receive the embargoed judgement between Thursday 28 February and Tuesday March 5th. As the Horizon trial starts on Monday 11th, I anticipate that the formal judgement is most likely to be handed down on Thursday 7th/Friday 8th, although this is not definitive.
- We have the next Litigation Steering Committee on Tuesday and will revisit the contingency planning in light of that timeframe.

Horizon Trial

- We had the Pre-Trial Review this morning at which the timetable for the trial was agreed as follows:
 - Monday 11th – Opening submissions (1/2 day each)
 - Tuesday 12th – Thursday 21st – non-expert witnesses. For the Claimants this includes 5 postmasters from the wider claimant group (not lead claimants), Richard Rolls (formerly of Fujitsu and the source of the remote access allegations), and Ian Henderson of Second Sight. For Post Office we have approximately 12 witnesses including Angela and other Post Office witnesses, as well as a number of Fujitsu witnesses.
 - Monday 25 – Friday 29 : the Court is not sitting due to Brexit contingency plans
 - Monday 1/4 – Friday 5/4 – expert evidence (2 1/2 days per expert)
 - w/c 8/4 – closing submissions – tbd
- Overall we are satisfied with this timetable.
- We successfully sought to restrict the evidence of Ian Henderson to matters of fact only, and not matters of ‘opinion’ (which would have potentially brought in commentary from the various Second Sight reports) with the judge stating that he did not expect Mr Henderson’s cross examination to last more than an hour, although Nick Wallis has already tweeted that we ‘lost’ on this point.

- All expert evidence has now been filed and our team has been responding to the new material raised in Jason Coyne's (the Claimant's expert) supplementary statement. Based on the work done to date (which is not yet complete) we believe that there are in most cases, reasonable responses to the new issues. Rob has also commented on the issues raised, and will be meeting the Counsel team on Monday to assist with the strategic positioning.

3rd Trial

- The scope of this trial was determined at the CMC on Tuesday. The 4 week trial starting on 4 November will address breach and limitation issues using 2 of the lead claimants as examples. This will therefore address the issue as to whether these claims - which would otherwise be 'time-barred', can in fact be included. In order for the Claimants to do this, they must establish deceit, concealment or mistake by Post Office. This issue affects almost half the Claimant group.
- In addition there will also be a consideration of the measure of loss suffered by 4 of the lead claimants; that is, how a Claimant's loss should be calculated when their contract termination involved a breach of duty by Post Office.
- The judge also set out the timetable by which the various process steps must be completed between now and November and set dates for further CMCs.
- Again, we felt that overall the CMC went well for us with the Judge's decision reflecting the orders we had requested.

4th Trial

- The Court also determined that there will be a 4th trial in March 2020 (also for 4 weeks) and has specified the process for selecting Test Claimants. The rationale for this trial will be to assess the claims of a wider group than the current six Lead Claimants.

We will update the Board and UKGI along the above lines, and the Board Litigation sub-Committee is scheduled to meet next Thursday at which the Horizon QC Tony de Garr Robinson, will provide his view of the strengths and weaknesses of the expert reports.

I can provide a further update at GE on Monday if required.

Jane

Jane MacLeod
Group Director of Legal, Risk & Governance



Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile number: