

From: Cooper, Tom - UKGI[/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D968D43E33749AE9E59F9C9350E69D5-COOPER, THOMAS (TCOO)]
Sent: Fri 19/10/2018 6:28:16 AM (UTC)
To: Watson, Richard - UKGI[REDACTED GRO]; Aldred, Tom - UKGI[REDACTED GRO]; Clarke, Stephen - UKGI[REDACTED GRO]
Subject: Fwd: Postmaster Litigation

There's a separate email from Paula about how they are going to change approach which she has asked me not to forward.
 Tom

Sent from my iPhone

Begin forwarded message:

From: Jane MacLeod <[REDACTED GRO]>
Date: 18 October 2018 at 19:41:36 BST
To: Ken McCall1 <[REDACTED GRO]>, Carla Stent <[REDACTED GRO]>, Tim.Franklin1 <[REDACTED GRO]>, "Shirine Khoury-Haq" <[REDACTED GRO]>
Cc: Tim Parker <[REDACTED GRO]>, "Cooper, Tom - UKGI" <[REDACTED GRO]>, Paula Vennells <[REDACTED GRO]>, Alisdair Cameron <[REDACTED GRO]>, Veronica Branton <[REDACTED GRO]>
Subject: Postmaster Litigation

All

As you may recall we had a Case Management Conference last week (Wednesday 10 October) to hear our application to strike out certain parts of the evidence presented in the witness statements of the Lead Claimants. We received the decision on Monday evening and the decision rejects our application.

The application was decided on case management grounds for which the Managing Judge has considerable discretion; applying that discretion, the Managing Judge set a very high threshold for strike out, and concluded that we had not established to the necessary standard that the Claimants' evidence could never be relevant to the case, given the number of Common Issues; the "considerable legal analysis" each will require; and what our case on those issues is. However he confirmed that he will apply properly the law on admissibility when it comes to trial, and that the November 2018 Common Issues Trial will not rule on matters which concern Horizon or whether Post Office actually "breached" its obligations to the Claimants (matters to which most of the disputed evidence goes and which will be dealt with in later trials).

As previously advised, this is consistent with the Managing Judge's approach of enabling the Claimants to have their "day in court" while applying the orthodox legal position. That said, we lost the application and can expect the Claimants to be awarded their costs when that question is dealt with on the first day of trial.

However in deciding the application, the Managing Judge was very critical of our conduct of the case, intimating that we were not acting cooperatively and constructively in trying to resolve this litigation

(which criticism was levelled equally between the parties); and that we had impugned the court and its processes by making the application for improper purposes. This response is extremely disappointing as this has not been our intention, and his challenge as to the purpose for which we had applied for strike out is at odds with comments he had made during various procedural hearings over the past year.

The judgement has been reported today in the Law Gazette (<https://www.lawgazette.co.uk/law/judge-berates-aggressive-litigation-tactics-from-an-earlier-era/5067986.article>). This is the same journal that picked up the Judge's criticism of Post Office tactics around the same time last year.

We are working with Portland and the Comms team to refine our preparation for trial – including our reactive communications plan – in the context of the Judge's remarks.

Please let me know if you would like to discuss this further.

Kind regards,

Jane



Jane MacLeod

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