

12/12

Avene Regan

From: Paula Vennells
Sent: 06 December 2018 08:19
To: Avene Regan
Subject: Fwd: Post Office Group Litigation Update - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Ppo for GE next week - pls highlight the last para (or thereabouts) re pre-NT contracts requiring proof of fault.

Thx

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From: Rodric Williams <GRO>
Sent: Thursday, December 6, 2018 4:24 am
Subject: RE: Post Office Group Litigation Update - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD
To: Paula Vennells <GRO>, Jane MacLeod <GRO>, Mark R Davies <GRO>

Thanks for the challenge Paula.

My apologies for not seeing this sooner, but if I was the Claimants' lawyer, the points I would make following Patrick Green QC's closing would be:

- We (i.e. the Claimants) were able to air in court all of our concerns about Post Office and how it behaved towards us;
- We also raised enough law to give creditability to our case;
- Even if it's not a "slam dunk", we might have done enough to convince the Judge that he should find a way through the law to come down on our side.

From that same perspective, the points I would make from the first day of David Cavender QC's closing would be:

- Post Office is very sensitive about evidence which casts it in a bad light, and is trying to tie the Judge's hands from using that evidence;
- The Judge likes the "relational contract" concept, so may want to use that to imply good faith concepts into the postmaster contracts; and
- Post Office wants to make postmasters strictly liable for branch losses, when the contracts' words (or at least the pre-NT version) require proof of fault, and they know that losses can be caused by things outside the postmaster's control, e.g. bugs in Horizon or inaccurate Transaction Corrections.

I hope that's helpful, but please let me know if you would like me to expand on any points. I will also try to do the same exercise tomorrow following the last day of Closing Submissions.

Kind regards, Rod

From: Paula Vennells
Sent: 05 December 2018 11:03
To: Rodric Williams <GRO>, Jane MacLeod <GRO>, Mark R Davies <GRO>
Subject: Re: Post Office Group Litigation Update - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Thank you Rod. This is helpful; more reassuring than of late.

If you were the lawyer for the claimants, what would you be writing in addition?

Happy to take a call if you prefer.

Paula

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From: Rodric Williams <[redacted]@GRO>
Sent: Tuesday, December 4, 2018 22:48
To: Paula Vennells; Jane MacLeod; Mark R Davies; Alisdair Cameron
Cc: Mark Underwood1; Melanie Corfield; Ben Foat; Angela Van-Den-Bogerd
Subject: Post Office Group Litigation Update - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

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

All,

Today the Claimants' counsel Patrick Green QC closed the Claimants' case on the Common Issues, having covered:

- the "true meaning of the contract"
 - o Mr Green relied on a Supreme Court case called "Autoclenz" to argue that the postmaster relationship can be rebalanced because it is essentially one of employment.
 - o He could not however address the Judge's questions on how the employment analogy could be applied to the corporates we engage as postmasters.
- agency and accounting issues
 - o Mr Green argued that Post Office effectively controls the postmaster accounts, such that the postmaster should not be held to them.
 - o The Judge however appears to have understood that Horizon simply records the postmaster's branch transactions, which s/he can dispute.
- the "liability for loss" provisions
 - o Mr Green argued the clause in the old model contract is plain on its face, and requires Post Office to prove positively that the postmaster caused a loss.
 - o He extended this to the equivalent clause of the new model contract because it seeks to achieve the same purpose, despite the very different language used.
 - o The Judge however noted the different language used between the two models, in particular the new model clause's apparent focus on postmaster responsibility for physical Post Office cash and stock, rather than losses more generally.
 - o These were the only express contract terms that Mr Green referred to in his two days closing.
- the criticisms we made of the Claimants' approach to the evidence in our written Closing Submissions
 - o Mr Green sought to pre-empt our challenges to the Claimants' use of inadmissible evidence.
 - o The Judge did not show any interest in this particular line of argument.

In his Closing Submissions, Mr Green spent very little time on the main issues being tried, namely how the Court should approach interpreting the express terms of the contract, and why it can and should imply the terms the Claimants' seek. He instead seemed content to rely on his overarching narrative of the postmaster relationship being deeply unfair and biased towards Post Office (and even then, he was not as overtly critical of Post Office as we had anticipated).

The main risk therefore remains that the Judge will "fill the gaps" in the Claimants' analysis, a risk our QC David Cavender will look to address when he begins delivering Post Office's Closing Submissions.