

Message

From: Pheasant, Andrew [GRO]
Sent: 28/08/2015 16:04:58
To: Mark Underwood1 [/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Mark Underwoo222a42ec-51a8-4dfa-a353-dcea512679657b4]; Rodric Williams [/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Rodric Williamse9c114f4-b03f-4595-b082-ce89be5c79d47b]
CC: Parsons, Andrew [GRO]
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID20472253]
Attachments: _SPREADSHEET_31211384(1)_150714 V4 Cases State of Play in Respect of Debt Treatment - BD amendments.XLSX
Flag: Follow up

Hi Mark,

Attached is the updated spreadsheet.

As discussed, the approach to this was to start with the summary of cases and they were split out into the following tabs:

- Cases – which are the remaining active cases
- Time barred – those which appear to already be time barred [GRO] has been added to this with a note confirming that the decision was taken not to pursue);
- Resolved cases – those cases resolved through the mediation scheme;
- No current debt – cases whether either the debt has been repaid or previously a decision was taken to write the debt off;
- Bankrupt / IVA – cases where it appears the applicant has entered into bankruptcy or an Individual Voluntary Arrangement which has compromised the debt and it cannot be pursued.

The "Limitation Review" tab provides a summary of the limitation cases, ordered by the date limitation arrives. The purpose being to allow you to assess when the amount of debt that may not be recoverable if proceedings are delayed. Something else to consider is the ability to issue a claim and then serve it four months later. This will be the first time that the Applicant receives the claim form, buying some more time before they know the claim has been issued, but the claim form will be dated with the date on which it is issued, which could result adverse inferences being drawn on the delay in notifying them / serving the claim.

If you have any further queries please let me know.

Best regards
Andy

Andrew Pheasant

Associate

for and on behalf of Bond Dickinson LLP

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From: Mark Underwood [GRO]
Sent: 28 August 2015 12:11

To: Pheasant, Andrew; Rodric Williams
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Hi Andy,

Rod and I have spoken to Angela and agreed that we will let the limitation data pass without action.

When we spoke yesterday you said you would update the spread sheet and send it back to me. Could you include Shaheen in these updates please.

Many thanks

Mark

Mark Underwood
Complaint Review and Mediation Scheme

GRO

From: Pheasant, Andrew [GRO]
Sent: 28 August 2015 09:59
To: Mark Underwood1; Rodric Williams
Cc: Parsons, Andrew
Subject: Re: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Hi Mark,

I've spoken with Alison - who in summary shares the same view that I do - claim is strong on merits but there is a high risk on recoveries.

Alison suggested Angela would need to make the final decision so I will email Angela as well.

I assume that as the applicant was convicted it is a no to mediation and there is no merit in preserving the claim for future negotiation.

Thanks
Andy

Andrew Pheasant
Bond Dickinson LLP

From: Mark Underwood1 [GRO]
Sent: Friday, August 28, 2015 09:25 AM
To: Pheasant, Andrew; Rodric Williams [GRO]
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Thanks Andy – I think we need to try and make a decision on what we are going to do with this today. That decision being, for the time being, simply whether to issue a claim or not rather than actually pursuing the debt.

If you are unable to make contact with Alison this morning – let me know and I will try and find some other people we could speak to in her absence

Thank you for your endeavours

Mark

Mark Underwood
Complaint Review and Mediation Scheme

GRO

From: Pheasant, Andrew [GRO]
Sent: 27 August 2015 17:52
To: Rodric Williams; Mark Underwood1
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Rod – agreed and I would suspect with BAU approach being in place this has been considered but just has not been captured in the information we have here. I'll check the position with Alison.

Mark – cost would primarily be the Court fee, which would be £3,482.61 (5% of the total debt including interest – which I calculate to be £69,652.27).

We will get an appointment booked with Court in case we do need to issue.

Many thanks
Andy

From: Rodric Williams [GRO]
Sent: 27 August 2015 16:43
To: Mark Underwood1; Pheasant, Andrew
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Given she was prosecuted, I'd expect there to be a Proceeds of Crime Act application in which the Court assesses the "value" of her crime and her ability to repay it by reference to her available means.

Can we look at the criminal file to see if there's anything? My guess is that if we didn't get anything through PoCA, we won't get anything through civil proceedings....



Rodric Williams
Solicitor, Corporate Services

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GRO

rodric.williams@ [GRO]

From: Mark Underwood1
Sent: 27 August 2015 16:21
To: Pheasant, Andrew; Rodric Williams
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Thanks Andy,

What is the cost associated with filing a claim? And if we were to do so would [GRO] be made aware that we have done so?

On June 10, the decision was taken that this type of case (i.e. not mediated, not CCRC) would be treated as BAU, but the timing of when we would begin recovery actions was to be decided upon. With Jane away for 10 days, with Alison's approval and assuming the cost of doing so is not huge, I think we should file a claim and then revisit once Jane is back.

Mark

Mark Underwood
Complaint Review and Mediation Scheme

[GRO]

From: Pheasant, Andrew [GRO]
Sent: 27 August 2015 16:10
To: Rodric Williams; Mark Underwood1
Cc: Parsons, Andrew
Subject: RE: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call [BD-4A.FID25887486]

Rod,

We would just need to file a claim form initially to protect this claim. This has been drafted and can be issued locally. We can also wait a further four months before serving. This will allow us time to finalise the particulars of claim, which deal with Horizon head on, and is in a draft form. From a timing perspective, it gives us time to revisit the pre-action protocol and may be a better time to serve the claim.

Onto the elements below, on the question of assets, [GRO] does not own the property she appears to be residing in (using the contact address from the mediation process). On merits, thee do appear strong at this stage and she pleaded guilty to false accounting.

I have left a message for Alison Bolsover, who may have more background information on what steps have already been taken to recover the debt and will let you both know when I have spoken to her.

Many thanks
Andy

Andrew Pheasant
Associate

for and on behalf of Bond Dickinson LLP

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From: Rodric Williams [GRO]
Sent: 27 August 2015 15:34
To: Mark Underwood1
Cc: Pheasant, Andrew
Subject: FW: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call

For [GRO] – skip ahead to the "Legal Approach to Debt Recovery Action" section.

Andy – if we have to file protective proceedings, did you draft a new precedent claim form to introduce the Horizon claim head on (incl. that it records the accounts (inc. stock and cash on hand) which the branch signs off)?

From: Rodric Williams
Sent: 10 June 2015 13:18
To: Mark Underwood1
Cc: Pheasant, Andrew [GRO]
Subject: Debt Claims involving "Horizon" allegations - RW thoughts for 10.06.15 con call

Mark – apologies for not being able to join this afternoon's call. In case it helps the discussion, I set out below my thoughts on how we should approach "Horizon" debt claims, including the debts owed by those who applied to the Mediation Scheme.

I am copying Andy Pheasant from BD to this email, whom I have discussed this with and will be dialling in.

Issue

Post Office is concerned to ensure that it is not prevented from recovering agency branch debts simply because an agent asserts that "Horizon" caused the loss.

Accounting Treatment for Agent Debt

I understand a full provision is made in Post Office's accounts for former agent debts (i.e. we immediately write down their value to £0) with any subsequent recovery being treated as profit. For current agent debts, we make the full provision after 60 days, or after 90 days if they are a "multiple" operator.

Currently, there is c.£6.7m of unpaid agent debt being managed by the Agent Accounting team in the FSC, all of which has been provided for, and that we recovered c. £1.2m in 2014/15.

Legal Approach to Debt Recovery Action

The standard legal approach to debt recovery is:

1. Find out whether the debtor (agent) has assets to pay the debt, plus interest and legal costs.
2. If so, do a cost/benefit analysis of pursuing litigation which considers:
 - a. legal costs (potentially to trial);
 - b. likelihood of success (including the possibility of settling at a discount);
 - c. prospect and likely costs of enforcement action (e.g. to obtain and realise a charging order over property); and
 - d. non-legal issues (e.g. adverse publicity).
3. If the analysis supports pursuing a court claim, begin the process by having solicitors send a letter of claim in accordance with the Court's pre-action protocol.

"Horizon" Risk to Debt Recovery Action

The main "Horizon" risks presented by pursuing a debt are:

- the agent/defendant “puts Post Office to proof” of the claimed loss, i.e. demonstrate that Horizon has recorded an actual loss (2.a. to c. above); and
- adverse publicity (2.d. above).

“Put to Proof”

This is essentially what Lee Castleton did. Although Post Office was able to satisfy the court and obtain judgment (the High Court held that “the conclusion is inescapable that the Horizon system was working properly in all material respects, and that the shortfall of £22,963.34 is real, not illusory”), the legal costs dwarfed the debt and no recovery was made when Mr Castleton made himself bankrupt.

However, Post Office is now much better placed to respond to such a challenge in debt or other civil law proceedings (criminal cases will still need to be treated differently). Over the past three years, we have built up a reasonable body of documentation which supports the general proposition that Horizon accurately records transactions as entered in a branch, including:

- Second Sight’s July 2013 Report
- Second Sight’s April 2015 “Part Two” Report
- The evidence Ian Henderson gave to the BIS Select Committee hearing in February 2015
- The court’s findings in Castleton
- The headline statistics on Horizon use (used in 11,500 branches by 78,000 currently registered users, processing 6m transactions a day for the past c.15 years etc).

This body of evidence may be sufficient to support Post Office’s case that it is more likely than not that Horizon accurately records a branch’s accounts, and that the agent needs to do more than just say “Horizon caused the loss”, but actually provide details of when, where and how s/he believes it did so. The court’s Civil Procedure Rules then provide a number of opportunities to test this position before trial (e.g. pleading standards, requests for further information, and case management /directions on disclosure and expert evidence).

Ultimately, we will only ever know if this is sufficient if we try it. I have therefore asked Andy Pheasant at Bond Dickinson to draft a precedent debt recovery claim which seeks to pre-empt a “Horizon” challenge along the above lines.

Adverse Publicity

Assuming we now have sufficient evidence to bring a civil claim, the question is whether (and if so, when) we should do so given the generally unsympathetic media climate to Post Office and Horizon.

There isn’t a legal answer to that, but I note:

- Panorama is scheduled to run a piece on Horizon on 29 June 2015 (which may in turn generate further media activity); and
- Former agents who have applied to the Mediation Scheme require careful treatment given that they are likely to:
 - o fight or make noise about any claim by Post Office (they have demonstrated that they are motivated having applied to the Scheme);
 - o claim that they were “led up the garden path” by the Scheme and/or claim it was disingenuous as demonstrated by Post Office now suing them;
 - o have access to media outlets (e.g. through Alan Bates)

Approach to Current Agents

In case it assists, we have suggested to the FSC that it respond to allegations from current agents that Horizon caused the branch loss by:

- noting that no evidence has been put forward to support allegations that Horizon caused branch losses;
- asking the agent to provide specific details of the alleged problem, e.g. transaction type, date and value, plus any supporting documentation; but
- in the absence of anything material, the debt is payable.

Hope this helps, Rod



Rodric Williams

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GRO

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