

Message

From: Patrick Bourke [GRO]
Sent: 03/07/2018 07:53:25
To: Mark R Davies; [GRO]; Jane MacLeod; [GRO]; Rodric Williams
[GRO]; Mark Underwood; [GRO]; Andrew Parsons
[GRO]; Melanie Corfield; [GRO]
Subject: Re: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Hi Jane

That all looks entirely sensible to me.

Thanks

Patrick

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From: Mark R Davies
Sent: Tuesday, July 3, 2018 8:37:52 AM
To: Jane MacLeod; Rodric Williams; Mark Underwood1; Andrew Parsons; Patrick Bourke; Melanie Corfield
Subject: Re: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

All

My only comment is a suggestion we change « the issues » in para 2 to « any issues ».

Mark

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From: Jane MacLeod
Sent: Tuesday, July 3, 2018 8:29:05 AM
To: Rodric Williams; Mark Underwood1; Andrew Parsons; Mark R Davies; Patrick Bourke; Melanie Corfield
Subject: RE: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

All

Any final comments on the final draft as sent by Rod yesterday?

The process once we have agreed it, is to circulate the draft wording to Paula & Al and make sure they are comfortable, then to circulate to the ARC members (Tom C has asked for the 'shareholder' to review as well), and then to send to EY – all of which we need to do before the beginning of next week as EY needs to set up their internal review panel.

Jane

For information, the following is the proposed text of the ARC minutes:

"Post Office Group Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Discussion turned to the disclosure of the Group Litigation. It was understood that the extent of disclosure had become a substantive issue since the Committee's last meeting. Solicitors on behalf of the claimants

had recently included an estimate of £80m to £90m in a skeleton argument submitted to Court relating to cost budgeting, and EY had recommended the disclosure of this figure. PM believed that the estimated figure should be disclosed as:

- (a) The claimants' had initiated litigation in 2016 and while previous ARA's had included a description of the Group Litigation within the note on contingent liabilities, the claim had not been quantified.
- (b) There were two trials now scheduled in the financial year to discuss preliminary issues.
- (c) The figures contained in the skeleton argument, while heavily caveated, were now technically in the public domain
- (d) The figures were material and could be considered as the best current estimate of the scale of the potential damages to be sought. PM recognised that disclosure of the figure could be accompanied by a Post Office narrative challenging the reliability of the estimate.
- (e) There was no suggestion that PO could not continue as a going concern.
- (f) Depending on the extent of the disclosure, EY would consider whether it would include an emphasis of matter statement in its audit report. It was acknowledged that this was neither EY nor Post Office's preferred solution. Accordingly, PM requested the Committee to reflect on the extent of its disclosure and agree updated wording for review by EY. Following receipt of the wording, EY would convene an internal panel to consider whether the proposed note would be sufficient and correspondingly, whether an emphasis of matter statement would be included.

The Committee noted the text of the existing note, together with alternative examples of disclosures provided by JM, and assessed the potential implications arising from each of the options. The following points were considered:

- (a) Timing: the Committee noted that given the nature of the issues to be considered at the upcoming Common Issues and Horizon trials it was not likely that the Claimants' damages would be quantified until after conclusion of those trials and receipt of the respective decisions.
- (b) Purpose: The Committee noted that the estimate included in the Skeleton Argument did not represent a formal assessment of damages, was expressed to be "subject to further quantum analysis and formulation" and was only intended to be used as a guide for proportionality of costs, and the Claimants' solicitors had stated "There are inherent difficulties to setting out the quantum of these claims at this stage and the figures should be relied upon solely as a suitable guide for the purposes of proportionality considerations in costs budgeting." JM advised that the Post Office had asked the claimants' solicitor to explain the calculation but a response had not been received.
- (c) Accuracy: The Committee agreed that given the relatively early stage in proceedings, it could not be confident that the quoted figure was within a reasonably appropriate range, and indeed potential damages once quantified could be materially larger or smaller, and therefore disclosure of a number now could be misleading.
- (d) Reputation: The Committee noted that, as a trusted brand, Post Office must operate in a fair and transparent manner. The Committee discussed who might rely on the disclosure of the figure in the accounts. The Shareholder was conversant with the latest developments in the Group Litigation and the ARA would highlight that the Post Office was defending a large claim. In the circumstances, the Committee believed it was unlikely that the omission of an estimated figure would mislead a stakeholder and cause them to act to their disadvantage. The Communications Team was equipped to respond to any enquiries.
- (e) Proportionality: The Committee noted that for Post Office to reference the number in its accounts would lend credence to the figure and that this may have unintended consequences and be damaging to Post Office's defence. It was noted that Post Office's legal team recommended against disclosure.

Following careful consideration the Committee concluded that the existing draft disclosure in the contingent liability note needed to be expanded, however they did not believe that disclosure of the estimated aggregate claim value (provided as part of a skeleton argument) would be a reliable and fair reflection of the size of claim. They therefore expressed a strong preference not to disclose the Claimant's estimated figure. The Committee authorised JM to draft and circulate proposed wording for the Group Litigation note. The Committee would agree the final wording by correspondence before onward submission to the EY panel.

The Committee was advised that EY would seek the advice of its internal evaluation panel in the week commencing 9 July before confirming its final position on management of the disclosure. Accordingly the Committee agreed to convene an extraordinary meeting later in July to receive EY's conclusion, review the ARA and make its recommendations to the Board.

The Committee noted the Financial Results report."

**Jane MacLeod**

Group Director of Legal, Risk & Governance
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

GRO

From: Rodric Williams

Sent: 02 July 2018 16:07

To: Jane MacLeod <[REDACTED]>; Mark Underwood <[REDACTED]>
Andrew Parsons <[REDACTED]>; Mark R Davies <[REDACTED]> Patrick Bourke
<[REDACTED]>; Melanie Corfield <[REDACTED]>

Subject: RE: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

All – following a discussion with Jane, I have made a further amendment to address the specific point made by our auditors, which is that the Particulars of Claim (both Generic and Individual) do not specify a claim value or range as would normally be expected.

The final sentence of the second paragraph of both versions now reads *"To date, the Claimants have not asserted the aggregate value of their claims in any of the Particulars of Claim filed in the litigation."*

The full document can still be accessed by clicking [here](#).

Rod

From: Rodric Williams

Sent: 02 July 2018 15:06

To: Jane MacLeod <[REDACTED]>; Mark Underwood <[REDACTED]>
Andrew Parsons <[REDACTED]>; Mark R Davies <[REDACTED]> Patrick Bourke
<[REDACTED]>; Melanie Corfield <[REDACTED]>

Subject: RE: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane,

I have put a revised version (clean, not tracked) on SharePoint (click [here](#)), which seeks to address your point by referencing the only document which formally sets out a claim value, namely the Claim Forms. I realise that this may be picked up as "understating" the potential claim value, but as it stands the Claim Forms remain the only valuations formally asserted by the Claimants.

Andy – I'll email you the wording.

Rod

From: Jane MacLeod

Sent: 30 June 2018 16:29

To: Mark Underwood <[REDACTED]>; Andrew Parsons <[REDACTED]>;
Rodric Williams <[REDACTED]>; Mark R Davies <[REDACTED]>; Patrick Bourke
<[REDACTED]>; Melanie Corfield <[REDACTED]>

Subject: RE: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Thanks Mark

I'm happy with your wording in principle, however EY were keen that we include something to say that the claimants have not formally set out their claim for damages/losses. So could we please have some legally correct wording included that makes that clear? Saying that the court hasn't ordered the process doesn't quite go far enough.

Apologies that was the intention behind my 'statement of claim' wording – however on reflection I didn't actually ask for the correct wording!

Thanks

Jane



Jane MacLeod

Group Director of Legal, Risk & Governance
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[REDACTED]
GRO

From: Mark Underwood1

Sent: 30 June 2018 13:42

To: Jane MacLeod <[REDACTED]>; Andrew Parsons <[REDACTED]>; Rodric Williams
<[REDACTED]>; Mark R Davies <[REDACTED]>; Patrick Bourke
<[REDACTED]>; Melanie Corfield <[REDACTED]>

Subject: RE: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Thanks Jane,

My comments and suggested track changes for this copy list's consideration are attached.

Mark



**2017 Winner of the Global Postal Award
for Customer Experience**

Mark Underwood

Head of Portfolio: Legal, Risk & Governance

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GRO

From: Jane MacLeod

Sent: 28 June 2018 17:21

To: Andrew Parsons **GRO**; Rodric Williams **GRO**; Mark Underwood **GRO**; Mark R Davies **GRO**; Patrick Bourke **GRO**; Melanie Corfield **GRO**

Subject: POSTMASTER LITIGATION - DRAFT WORDING FOR THE ARA - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

All

There was a lively debate at the ARC today about the extent of disclosure required, and the pros & cons of the various options. In particular:

- It was recognised that 'quoting' the number, gave it a credence that it wouldn't otherwise have
- The risk of over-stating the quantum was as great as the risk of understating it
- It is relevant that no 'statement of claim' has yet been received setting out the quantum of damages, and it was recognised that this may not be received before the end of the financial year.
- It was important that some context be provided to protect the directors so that it is clear that they are not ignoring the potential impact.

EY have asked us to mock up drafting for them to consider, although it is clear that they will push for a more conservative view. Accordingly I have drafted the attached versions for consideration and comment. The key difference is the first one references the £80-£90 figure (and qualifications) and the second version doesn't.

I would be grateful for your thoughts on each version - the more detail we provide, the greater the chance that EY won't consider that they need to include the number in their 'emphasis of matter' (which seems to be their likely outcome). I'm sure I haven't correctly referred to the document that sets out the quantification of claims and damages – referred to here as a 'statement of claim'.

All suggestions, gratefully received,

Jane



Jane MacLeod

Group Director of Legal, Risk & Governance
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GRO

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