

From: "Andrew Parsons" </O=EXCHANGE-ORG/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AD9ED344815E47E4AAA3C0E7E1740919-ANDREW PARS>

To: "Mark Ellis" <GRO>

Cc: "Amy Prime" <GRO>, "Victoria Brooks" <GRO>, "Thomas P Moran" <GRO>, "Jane MacLeod" <GRO>, "Angela Van-Den-Bogerd" <GRO>, "Mark R Davies" <GRO>, "Stuart Nesbit" <GRO>, "Patrick Bourke" <GRO>, "Rodric Williams" <GRO>, "Melanie Corfield" <GRO>, "Tom Wechsler" <GRO>, "Nick Beal" <GRO>

Bcc: "364065_01369_Horizon IT System_Group Action E_Mails <{F26896945}.4A-LIVE@EM-S.NETWORK.LOCAL>" <{F26896945}.4A-LIVE@EM-S.NETWORK.LOCAL>

Subject: RE: PLSG - Decision Paper - Decision required by 12noon on Monday 18 December [BD-4A.FID26896945]

Date: Sun, 17 Dec 2017 09:49:37 -0000

Importance: Normal

Inline-Images: image001.png; image002.png; image003.png; image004.png

Thanks Tom and Mark.

Your questions principally focus on the alternative options and why these are not the preferred route. I've therefore set out more detail on this below.

At present, neither Freeths nor the Court have set out their views on what they think should happen in March 2019 or thereafter. We want to get our proposal on the table first whilst we have a blank canvass so that we can shape the direction of the conversation. Freeths have so far shown little appetite to set out a grand plan for this litigation (despite us asking for one from the outset) and they have largely agreed with our proposals (it should be remembered that it was our idea to focus the first trial on the contractual issues, not Freeths).

The way we intend to do this is a letter that floats the Lead Cases Trial as an idea for discussion as the long term plan, whilst also discussing what to do in March 2019. The letter will have a tone suggesting ways forward rather than making a firm proposal and will ask Freeths for their ideas. We do not intend to explain why the alternatives do not work (which was one of your questions Tom) because we do not want to set a negative tone that suggests we are blocking ideas or being difficult. If Freeths present an idea that has merit, we should consider that in good faith. Our letter will not therefore commit Post Office to a course of action, and will leave scope to change direction if a better route opens up or we encounter major resistance.

My prediction is that Freeths will not have thought very far ahead. From conversations with them, they are struggling with the pace of this litigation and that leaves them little time to do long term planning. I also predict that their strategy will be to try to get as many documents as they can from Post Office as soon as possible, and then come up with a long term route forward based on the most attractive option arising from those documents. If they were forced to pick a route now, my guess is that they may be attracted to a Lead Cases Trial and / or they may want to focus on Horizon as a discrete issue in March 2019 (see further below).

The alternative to a Lead Cases Trial is to break down the litigation by topic. This would result in several trials like the one we have in November 2018 on the contract. Each "Common Issue" trial would take roughly 9 – 12 months. There are dozens of topics that could be covered, and so this would likely lead to 3 – 4 trials on 3 – 4 groups of similar topics. At the end of that process, however, we will have only addressed a number of key issues and not yet tackled a single Claimant's case in full. We would therefore end up still having to hold some form of Lead Cases Trial, albeit the grounds for dispute will have been reduced and the Lead Cases Trial would be easier / shorter. Even if we were to overlap the trial preparation (eg. running trial 1 whilst preparing for trial 2) I believe that this would take 4 - 5 years. This is why we believe that this route would ultimately take longer and cost more.

In terms of possible topics that could be pulled out for discrete determination, there are many superficially attractive options, but all run into similar problems. I set out below a few examples to illustrate this:

- **Training.** We could hold hearings on whether Post Office's training was adequate. The question is then what exact training are you testing in Court. If we look at the initial training offered when becoming a postmaster, this will have changed considerably over the 17 years Horizon has been in place. The training also changes depending on the branch and the postmaster – an experienced postmaster moving to a small new branch will need little training, whereas as a new postmaster taking on a converted Crown will require much more support. Moreover, many of the complaints about training are not that the training was inadequate, but that Post Office did not spot the need to train a particular postmaster. This question turns on the wider factual background to a case and whether there are circumstances that should have alerted Post Office to the need for further training (if indeed it has such a duty at all – that is a question for the November 2018 trial). Very quickly you can see how the issue of training is not a general question affecting all postmasters, but **highly fact specific** and one that needs to be considered in the context the Claimant's overall claim. It is unlikely that a trial focused just on training would reach general conclusions that would apply to and materially determine lots of Claimant's cases on training, as each case could be distinguished on its facts.
- **Helpline advice.** Much like training, the advice for the helpline turns very much on a particular claimant's unique position and needs to be considered in the context of their wider claim. It is also a good example of our second problem – the need for **duplicate evidence**. Even if one could prove that helpline advice was wrong, a Claimant then needs to show that the incorrect advice caused a sequence of events that resulted in a loss / their termination. A discrete hearing on the quality of the helpline would not extend as far as causation questions: those questions would then need to be heard at a separate hearing. However, the facts going to the quality of advice and the causation of loss will materially overlap. This might then require the Court to hear the same evidence twice at two separate trials. Duplicate evidence causes a variety of problems: wasted Court time, double costs in re-covering old ground, criticism of witnesses where evidence changes over time, new information coming to light in a later trial that then undermines the decision in an earlier trial.
- **Horizon.** We've given very careful thought as to whether we could pull out Horizon as a discrete topic, but believe this would be difficult. The Claimants accept that there is no fundamental problem with Horizon that affects all branches. Instead, their case is that Horizon poses a risk of suffering intermittent defects that may or may not arise on a case by case basis. The allegations around Horizon therefore fall into the same factually sensitive trap as training and support.

Moreover, the Claimants have not identified a specific problem with Horizon in their claims so far. It is not therefore possible to structure a trial around the idea that there are, say, 5 alleged problems with Horizon that the Court could review, analyse and decided upon. If Horizon was put forward as a topic, it could not therefore be considered through either the prism of particular cases (as they are factually sensitive) or particular issues (as these have not been alleged by the Claimants). It would require a general question, something like "Is Horizon reliable?". General questions of this nature could be extremely broad and difficult to determine.

Post Office would also have to **give up the high ground**. The Claimants face the burden of proof in showing Horizon is defective. This means that the Court starts from a loose presumption that Horizon works, and then the Claimants need to show that it doesn't by alleging specific problems. If we tried to tackle Horizon generally (and without any alleged specific problems) Post Office would end up trying to prove that there are no problems in the whole system. Proving a negative like this is very difficult. Also, as there are known problems in the system, Post Office will need to admit this generally which is unattractive.

I hope this helps explain why we don't believe that there is an obvious way for dealing with this litigation on a topic by topic basis. As said above, if Freeths do come up with a solution to this, then we should give it due consideration and our letter will be designed to draw them out on this.

Kind regards
Andy

From: Mark Ellis GRO
Sent: 16 December 2017 10:37
To: Andrew Parsons
Cc: Amy Prime; Victoria Brooks; Thomas P Moran; Jane MacLeod; Angela Van-Den-Bogerd; Mark R Davies; Stuart Nesbit; Patrick Bourke; Rodric Williams; Melanie Corfield; Tom Wechsler; Nick Beal
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Andy,

I agree in principle with the recommended approach. However, as Tom indicates, I would like to understand in greater detail why we believe structuring hearings to resolve issues on a topic by topic basis is likely to be more time consuming and costly than the recommended approach. Surely the topics in each case will dictate how we

segment and group cases in the future? How many possible categories of cases could be based on the issues within each claim, or is each claim unique in some way?

Regards,

Mark



Mark Ellis
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From: Thomas P Moran
Sent: 15 December 2017 17:24
To: Andrew Parsons [REDACTED]; Jane MacLeod [REDACTED]; Angela Van-Den-Bogerd [REDACTED]; Mark R Davies [REDACTED]; Stuart Nesbit [REDACTED]; Patrick Bourke [REDACTED]; Rodric Williams [REDACTED]; Mark Ellis [REDACTED]; Melanie Corfield [REDACTED]; Tom Wechsler [REDACTED]; Nick Beal [REDACTED]
Cc: Amy Prime [REDACTED]; Victoria Brooks [REDACTED]
Subject: RE: PLSG - Decision Paper - Decision required by 12noon on Monday 18 December [BD-4A.FID26896945]

Dear All

Hi, my comments are on the attached. With apologies for the urgency, I would be really grateful if SG members could come back with comments including a clear 'agree/disagree' for first thing Monday as we need to brief Paula on this before confirming the position with Andy.

For the record, while I have various questions about the details I agree with the recommendation.

Have a good weekend, all

Tom

From: Andrew Parsons [REDACTED]
Sent: 15 December 2017 10:17
To: Jane MacLeod [REDACTED]; Angela Van-Den-Bogerd [REDACTED]; Mark R Davies [REDACTED]; Stuart Nesbit [REDACTED]; Patrick Bourke [REDACTED]; Rodric Williams [REDACTED]; Thomas P Moran [REDACTED]; Mark Ellis [REDACTED]; Melanie Corfield [REDACTED]; Tom Wechsler [REDACTED]; Nick Beal [REDACTED]
Cc: Amy Prime [REDACTED]; Victoria Brooks [REDACTED]
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All

Please find attached an urgent decision paper on which I should be grateful for your comments. We need a decision by 12noon on Monday (so that we can action this before Freeths are able to submit their own proposal on this subject).

I hope the attached is self-explanatory but if you have any questions, please do feel free to call or email me.

Kind regards

Andy

Andrew Parsons
Partner
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d: **GRO**
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