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To: "james.hartley" [GRO]

Subject: Ways of Working

Date: Tue, 12 Dec 2017 13:01:13 -0000

Importance: Normal

James

I am writing this email to you personally in the hope of establishing a better way of working between our two firms.

This litigation is going to be long-running, complicated and contentious. It is inevitable that our clients will not agree on many things and will, I suspect, need the Managing Judge's assistance at times to resolve impasses between us. Nevertheless, if we can find common ground as to the tone and objectives of interaction between the legal teams, this litigation can be managed more constructively and smoothly, to the benefit of everyone and in line with our responsibilities to the Court.

I set out below a few points that would assist me with running this litigation from the Post Office side. None of what I say is intended as criticism of your firm or your clients. To the extent that I refer to things that, in my view, have not gone well or have been unhelpful, I do so only to explain where things could be done differently so to improve ways of working between us.

As a starting point, it would be good to acknowledge that just because the parties disagree that does not mean that either is automatically being unconstructive or unreasonable. It may well be a fair disagreement and one we need to work through together to see how much of the ground can be covered by pragmatic compromise. A factual and rational explanation of the point in dispute, written in a neutral tone without seeking to lay blame, is likely to facilitate our reaching a solution most quickly.

Since the CMC, we have sought more than ever to avoid point-scoring in our letters. I hope that, if you stand back and review our recent letters, you'll acknowledge that the tone has been constructive, even if you disagree with the proposals that we have made. I would be very grateful if your firm could adopt the same approach.

Another tension in this litigation is timing. We have been set a fast-paced timetable by the Court. We will both, at times, have difficulties getting full instructions quickly or need to move matters forward quickly for reasons that might not be immediately apparent. Flexibility will be needed on each side to help the other. I hope that we displayed this when dealing with your recent correspondence in relation to bankrupt Claimants where we sought to turn around your requests asap so that you might avoid the cost of having to issue another a separate Claim Form for these Claimants.

A point which causes difficulty at Post Office is when we are faced with only partial explanations or proposals. This is a complicated piece of litigation, where even seemingly simple decisions need careful consideration and therefore points need to be expressed clearly and more fully than might otherwise be the case. The more insight we can each offer on our thinking, the quicker and better both our clients will be able to respond.

One of the greatest challenges is that there are parts of your clients' case that we still do not understand. I appreciate that there may be parts of Post Office's case that you and/or your clients do not understand. Some of this is because the claims are still evolving, though I do think that some of it is the lack of clarity in the way the Claimant's positions are presented, which then only allows an imperfect response from Post Office. Wherever possible, I would ask that you be forthcoming with as much information as possible about the claims being advanced. In return, we are seeking to provide clarity on Post Office's position, and I hope that the extensive EDQ we have sent you reflects that.

It is perhaps unavoidable that the defendant to a large number of very different claims will sometimes be seen as obstructive when, in reality, all that it is trying to achieve is to make sure that the litigation is conducted effectively and fairly. It is not always the case that matters can be short-cut or streamlined, even where doing so would be of obvious and understandable benefit to the Claimants. We have taken this view, in particular, in relation to the detail in the pleadings and the SOIs, including the requirement that any allegations of dishonesty or bad faith be properly particularised. I hope that you will understand that Post Office must at times take a firm line on these kinds of issues and that your clients will not perceive this as obstructiveness. A key step in reaching a more constructive and efficient relationship is to at least start from an assumption that the other side is operating in good faith and is presenting genuine concerns.

Finally, this litigation will of course require us all to think creatively, openly discuss ideas and be prepared to adopt bespoke procedures. I'm glad that you have proposed a meeting around disclosure; I feel that our conversations have

always resulted in productive ways forward. In my view, we must try to avoid slavishly following a standard litigation process. Where the course of events needs changing for everyone's benefit, we should all be prepared to do this. I have encouraged my team to pick up the phone instead of sending letters (and I hope your team feel able to do the same) so that we collaborate more freely and quickly. We are always open to an innovative solution to any issue so as to better fit the needs of managing Group Litigation on this scale, which requires a good deal more collaboration than ordinary litigation if good progress and efficiency are to be maintained.

As always, I would be happy to discuss this further.

Kind regards
Andy