

Message

From: Andrew Parsons [GRO]
Sent: 19/09/2017 08:30:57
To: Jane MacLeod [GRO]; Thomas P Moran [GRO]
Subject: RE: Litigation Options Paper [BD-4A.FID26896945]
Attachments: _DOC_36932435(1)_Board briefing re Postmaster Litigation CMC Options (26-9-2017) v1 - AP comments.DOCX

Jane, Tom

Please find attached a few comments from me.

Kind regards
Andy

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From: Jane MacLeod [GRO]
Sent: 19 September 2017 08:21
To: Thomas P Moran
Cc: Andrew Parsons
Subject: Litigation Options Paper [BD-4A.FID26896945]

Tom

Following the conversation with Paula, Al and Kevin yesterday I have started to draft a briefing paper for the Board which I have sent to Andy for legal input.

Set out below is my summary (awaiting Andy's comments) of the terms which Freeths argue should be implied in to the contract as duties on Post Office, and which I propose to include in the paper. Andy's view is that those relating to burden of proof are the 'existential' challenges, whereas the others could probably be managed - albeit at a cost. To this end, I also attach the paper we looked at in July which sets out the high level risks, although it doesn't match exactly to the list below. We need to pull the risks and likely remediating actions together and then be able to have a further conversation with Paula, Al and Kevin. I will try and get to this later tonight, but if you have any thoughts - they'd be gratefully accepted!

Jane

Burden of proof to discover and investigate errors

- properly and accurately to effect, record, maintain and keep records of all transactions effected using Horizon;
- properly and accurately to produce all relevant records and/or to explain all relevant transactions and/or any alleged or apparent shortfalls attributed to Claimants;
- to co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all;
- to seek to identify such causes itself, in any event;
- to disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to Claimants candidly, fully and frankly;
- to make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof);

Horizon

- to provide a system which was reasonably fit for purpose, including any or adequate error repellency;
- to communicate, alternatively, not to conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for Claimants;
- to communicate, alternatively, not to conceal the extent to which other Subpostmasters were experiencing relating to Horizon and the generation of discrepancies and alleged shortfalls;
- not to conceal from Claimants the Defendant's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depended;

Training

- to provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or required the provision of new services);

Recovery of shortfalls

- properly, fully and fairly to investigate any alleged or apparent shortfalls; not to seek recovery from Claimants unless and until:
 - (a) the Defendant had complied with its duties above (or some of them);
 - (b) the Defendant has established that the alleged shortfall represented a genuine loss to the Defendant; and
 - (c) the Defendant had carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and whether it was properly attributed to the Claimant under the terms of the Subpostmaster contract (construed as aforesaid);

Suspension or Termination of Postmasters

- not to suspend Claimants:
 - (a) arbitrarily, irrationally or capriciously;
 - (b) without reasonable and proper cause; and/or
 - (c) in circumstances where the Defendant was itself in material breach of duty;
- not to terminate Claimants' contracts:
 - (a) arbitrarily, irrationally or capriciously;
 - (b) without reasonable and proper cause; and/or
 - (c) in circumstances where the Defendant was itself in material breach of duty;

General

- not to take steps which would undermine the relationship of trust and confidence between Claimants and the Defendant;

- to exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred;
- not to exercise any discretion arbitrarily, capriciously or unreasonably;
- to exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence;
- to take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls), business, health and reputation of Claimants



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