

Message

From: Jane MacLeod [GRO]
on behalf of Jane MacLeod [GRO]
Sent: 18/10/2018 18:31:45
To: Tim Parker [GRO]
CC: Paula Vennells [GRO]; Mark R Davies [GRO]
Subject: RE: Postmaster Litigation

Hi Tim

Paula and I have discussed this at length this afternoon. The commentary in the judgement is unfortunate. There is obviously a fine balance between doing everything that we can to achieve a legal victory, and maintaining the right public image – not helped when the judge is linking activity from 15 years ago, and assuming by extrapolation that this must underpin our behaviour today. We will work with Portland and the Comms team to manage the lines going forward, and will discuss with our external advisors how best to position the language so that we do not inadvertently influence the Judge adversely. Fortunately the decision in the Common Issues trial should be made on the basis of legal analysis – which is less subjective, and also appealable if we believe the judge arrives at the wrong decision.

To date there has not been any publicity as a result of the judgement, however the Law Gazette has picked it up today (<https://www.lawgazette.co.uk/law/judge-berates-aggressive-litigation-tactics-from-an-earlier-era/5067986.article>). It was the Law Gazette that picked up the previous criticism a year ago.

I will circulate an update to the Board separately. Please let me know if you would like to discuss any of this.

Kind regards,

Jane

**Jane MacLeod**

Group Director of Legal, Risk & Governance
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Mobile number: [GRO]

From: Tim Parker
Sent: 18 October 2018 14:53
To: Jane MacLeod [GRO]
Cc: Diane Blanchard [GRO]; Paula Vennells [GRO]
Subject: Re: Postmaster Litigation

Thanks Jane, I've read the judgement, and the judge does seem to somewhat negative about our efforts to take out elements of the evidence, even if he does acknowledge that both sides have been uncooperative with each other in the management of the case. My worry is that some of his points at the end betray what looks like an inherent dislike of our "aggressive" approach to the individual claimants as well as an "aggressive" approach to litigation, as well as a rap over the knuckles regarding what the judges sees as using negative PR as part of our argument. Interesting to know if this initial response from him suggests any change of tack on our part.

Best

Tim

Tim Parker

Chairman
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GRO

From: Jane MacLeod <GRO>
Sent: Thursday, October 18, 2018 12:52 pm
To: Tim Parker
Cc: Diane Blanchard; Paula Vennells
Subject: Postmaster Litigation

Hi Tim

I understand Tom Cooper has recommended you read the judgement from the hearing last week. This is attached.

We received the decision on Monday evening and the decision rejects our application for strike out of significant parts of the evidence continued in the Claimants' Witness Statements.

The application was decided on case management grounds for which the Managing Judge has considerable discretion; applying that discretion, the Managing Judge set a very high threshold for strike out, and concluded that we had not established to the necessary standard that the Claimants' evidence could never be relevant to the case, given the number of Common Issues; the "considerable legal analysis" each will require; and what our case on those issues is. However he confirmed that he will apply properly the law on admissibility when it comes to trial, and that the November 2018 Common Issues Trial will not rule on matters which concern Horizon or whether Post Office actually "breached" its obligations to the Claimants (matters to which most of the disputed evidence goes and which will be dealt with in later trials).

As previously advised, this is consistent with the Managing Judge's approach of wanting to give the Claimants their "day in court" while applying the orthodox legal position. That said, we lost the application and can expect the Claimants to be awarded their costs when that question is dealt with on the first day of trial (estimated to be c£120k).

In deciding the application, the Managing Judge was critical of our conduct of the case (see particularly paragraphs 55-57), including intimating that we were not acting cooperatively and constructively in trying to resolve this litigation (which criticism was levelled equally between the parties); and that we had impugned the court and its processes by making the application for improper purposes. This response is extremely disappointing given the approach we have been adopting, and his challenge as to the purpose for which we had applied for strike out is at odds with comments he had made during various procedural hearings over the past year. Nevertheless, we are refining our preparation for trial – including our reactive communications plan – in the context of the Judge's remarks.

Paula and I are catching up on this later today, and I know she would like to discuss it with you.

Kind regards,

Jane



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