



Email to UKGI

From: Rod

To: UKGI

Subject: Update – Security for Costs

Dear XXX

I write to make you aware of Post Office's decision to take further action to secure its legal costs.

If Post Office is successful in this litigation, the usual outcome is that the Claimants should, subject to the Court's discretion, be ordered to pay some of Post Office's legal costs. The Claimants are being financed by a litigation funder (an offshore venture capital fund) and have the benefit of an "after the event" litigation insurance policy. An order for the Claimants to pay Post Office's costs will very likely be indirectly paid by the insurer.

We believe that the insurance policy taken out on behalf of the Claimants has (among other issues) an exclusion for fraud, such that we believe that there is a risk that the insurers could refuse to pay out if Post Office was successful, leaving Post Office with no recompense for any of its legal costs.

In February 2018, Post Office made an application for Security for Costs. This application was for an order that the Claimants (or more accurately their litigation funder) put up security for Post Office's costs. The parties then agreed to a process of setting costs budgets so to inform the level of security that should be given. As part of that agreement, the Claimants agreed (under a Court order) to put up security in the form of a bond for at least £2m. These matters have been explained to, and discussed at length within Post Office and with the board sub-committee.

Despite the above agreement, the Claimants have not provided a bond by way of security. Instead, they are seeking again to rely on their insurance policy as security, which as explained above Post Office does not believe is adequate.

Post Office has tried to negotiate a solution to this difference of view with the Claimants but those negotiations have reached a deadlock. Having taken advice from Counsel and considered this matter at the Litigation Steering Group and with members of Post Office's executive committee, the decision has been taken to make a further application to the Court for the Managing Judge to determine the amount and form of security (if any) that should be given by the Claimants. This application will be made tomorrow.

The principal benefit, if the application is successful, is that Post Office will get security for its costs going forward, which gives it certainty of recovery of those costs up to the value of the security.

The application is not without risk. If Post Office loses the application and it will likely be ordered to pay the Claimants' costs of the application. The application may also distract resource from the trial in November 2018 and comes with a risk that the Judge is displeased with Post Office raising a "satellite" issue" rather than focussing on core matters.

We will keep you informed of any further material developments and let you know when we have a hearing date for the application.

Kind regards
Rodric

