
From: Andrew Parsons[GRO]
Sent: Sun 09/06/2019 8:20:48 PM (UTC)
To: Ben Foat[GRO]; Rodric Williams[GRO]
Cc: Tom Beezer[GRO]
Subject: RE: Group Litigation - Annual Report and Accounts - Disclosure [WBDUK-AC.FID26896945]

Ben

The concern at the outset was that any early settlement would be seen as conceding the Cs arguments on the SPM contracts and Horizon. This would then possibly open the floodgates to more claims. So the plan was for Post Office to try to secure some positive decisions in its favour before broaching the topic of settlement.

The strategy was to contest the Common Issues trial, because based on the advice from Counsel, Post Office should win on most points. With the Common Issues expected to be resolved in PO's favour, either the Cs funding would collapse or they might walk away for a modest settlement that, when viewed against a positive Common Issues judgment, would not set a dangerous precedent. With this in mind, before the CI judgment was handed down we had already agreed a mediator with Freeths and had begun planning for settlement discussions.

Further, Post Office had Deloitte review the Horizon system out the outset of the litigation and they advised that Horizon was robust and extremely unlikely to be the cause of shortfalls in branches. This therefore gave us a back-up plan in case a resolution didn't come immediately in the wake of the Common Issues judgment. Deloitte gave us a degree of confidence in winning the Horizon trial, and that might then cause the Cs funding to collapse or a modest settlement would be possible.

If this didn't work, then the next step was to "thin the herd". By this we meant identifying sub-groups of Claimants whose claims could be defeated on a technicality or legal point. For example, trying to strike out all the time-barred claims. By "thinning the herd" you undermine the economics of the group. Less Claimants means less damages which makes the funder's return on investment lower to the point where they would prefer to settle rather than invest more money.

The strategy was never to seek an outright win through the Court process, for that would mean ultimately defending 500+ individual claims in 500+ separate trials (because the cases turn on their own facts and the utility of dealing with them as a group gradually erodes as more "group issues" are resolved and you are left with individual issues). Even if Post Office's legal case was perfect, securing a full resolution through the Courts would take years and be massively disproportionately expensive. Hence, the above plan to build leverage and air cover through the Court process to force a settlement or a collapse of the litigation.

I hope this helps explain why there hasn't been an overall opinion on the merits of the litigation in general. My availability is patchy this week, but if you would like to discuss, drop me a note and I'll call you as soon as I can.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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From: Ben Foat <[REDACTED]>
Sent: 08 June 2019 21:01
To: Andrew Parsons <[REDACTED]> Rodric Williams <[REDACTED]>
Subject: RE: Group Litigation - Annual Report and Accounts - Disclosure [WBDUK-AC.FID26896945]

This maybe controversial – why are we going to trial if we don't have an opinion on the likely outcome (that would be favourable to us). One would not usually go to trial without advice that we were going to be successful.

In any event, can you please reach out to Chris and Lucy at PWC. As the external lawyers, they need your confirmation on the approach. They want to discuss the matter with you.

Kind regards
Ben

Ben Foat
General Counsel
Post Office Limited
<[REDACTED]>

From: Andrew Parsons <[REDACTED]>
Sent: Thursday, June 6, 2019 6:56:09 AM
To: Ben Foat; Rodric Williams; 'Watts, Alan'; [kirsten.massey@\[REDACTED\]](mailto:kirsten.massey@[REDACTED]); Henderson, Tom; Mark Underwood1
Subject: RE: Group Litigation - Annual Report and Accounts - Disclosure [WBDUK-AC.FID26896945]

Ben

For last year's audit, we provided the attached letter that expressed our view that it was reasonable for Post Office to state that it was currently unable to estimate the amounts of the ultimate liabilities which might be incurred. However, to be clear neither WBD nor Counsel have ever given an opinion that Post Office would or ought to be successful in the outcome of the litigation overall, which I think is the view sought in your email and PWC's email. We are not in a position to give such an opinion as that would turn on the outcome of 555 cases, and we would need to review and assess each individual case. Thus far, Counsel have produced a written opinion on the likely outcome of the Common Issues and have verbally briefed the board Sub-committee, and more latterly HSF, on the likely outcome of the Horizon Issues. But the opinions do not go further than that.

With the few small changes attached, I'm happy with the draft ARA wording. Also, save for adding a reference to the recent costs orders, I stand by the view in the attached letter and would (subject to clearing WBD's internal compliance checks) be prepared to issue this letter again this year.

Happy to discuss.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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From: Ben Foat [GRO]
Sent: 05 June 2019 22:19
To: Rodric Williams [GRO]; Andrew Parsons [GRO] 'Watts,
Alan [GRO]; kirsten.massey [GRO] Henderson, Tom [GRO]; Mark
Underwood1 [GRO]
Subject: Group Litigation - Annual Report and Accounts - Disclosure

All

See below. This relates to the Post Office 18/19 Annual Report and Accounts and specifically whether a provision needs to be made (ie if its more probable than not that an economic outflow will occur which essentially means that on balance we will like pay money in relation to this matter). The legal advice to date is that on balance Post Office believes that it would be successful given the legal analysis and that there has been no liability in respect of the claim to date and won't know until the judgment of at least the third if not fourth trials. Consequently, it is not more probable than not and as such no provision needs to be made but as a contingent liability a disclosure statement is required. I have circulated the draft disclosure wording for the ARA but PWC will need to speak to WBD specifically (with HSF) to confirm the view. They also need to get an understanding of costs.

Kind regards
Ben



Ben Foat

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Highly Commended for 'Excellence In-house' at the Law Society
Excellence Awards 2018

Mobile : [GRO]

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From: [lucy.h.mason](#) [GRO]
Sent: 05 June 2019 20:02
To: Ben Foat [GRO]
Cc: Chris Neale (UK - Assurance) [GRO]; Tom Lee [GRO]; Tom Woodhouse [GRO]; Andrew Paynter (UK - Assurance) [GRO]
Subject: Follow up to our call this afternoon

Hi all,

Thank you for your time today - it was most useful. As discussed, I've just dropped the follow-up actions into an email so we all know what the next steps are for both parties.

Post Office

- Ben to chase the arrangement of the external counsel calls/meetings with PwC for WBD and HS. These will be key and our partner, Andrew should be involved on the calls (Our expectation is that external counsel will provide written confirmation subsequent to the meetings that an economic outflow is not probable as POL ought to be successful based on current law).
- POL to provide an overview of expected costs per trial, to which financial year they relate for PwC completeness review (to ensure we're comfortable with what you are and what you are not providing for and the reasons why)
- Management to provide a paper as audit evidence which summarises the position on the GLO and the stance to be taken on disclosure in the ARA
- Management to start to draft disclosure for inclusion in ARA - including the fact pattern and what has happened in the case and POL's position at point of signing. Disclosure to be explicit about probability versus possibility (i.e. why it is not probable in light of what has happened over the course of the last year).

PwC

- PwC to consult internally as to the implications of what 'considering settlements options' in terms of every eventuality scenario planning means from a possibility / probability argument - to feedback to POL on this
- PwC to draft legal confirmation for Ben to review prior to issuing them to WBD and HS after the meetings have occurred.

Please let me know if I have missed anything out.

In terms of timeframes, I think the next couple of weeks will be fairly critical in shaping the above, we are obviously cognisant of the fact that this is a moving picture however there will be a lot of interest in the disclosure from stakeholders on both sides of the audit, so would be good to get things moving fairly quickly.

Thanks in advance,

Lucy

Lucy Mason (UK - Assurance) PwC | Senior Manager Mobile: [GRO] Email: [GRO]
[GRO] PricewaterhouseCoopers LLP Central Square, 29 Wellington Street, Leeds, LS1 4DL www.pwc.co.uk
At PwC we work flexibly - so whilst it suits me to email now, I do not expect a response or action outside of your own working hours.
Please note, Friday is my non-working day.

----- End of message text -----

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