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Subject: Update from the Board call -

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Importance: Normal

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All

Many thanks for your help in sorting out DNQC attendance at the call. He was very balanced in his approach, but confirmed that he thinks we have a good case on recusal. The Board asked a number of questions and my sense was that they were 'calmed' by his discussion. However they haven't yet made a decision. There is a further board call on Wednesday at 12.30 and they have requested whether Lord Grabiner would be available in person at the time – ideally at FD if that's possible? Having said that they recognise that he will almost certainly say the same things as DNQC.

So please pass on our thanks to DNQC.

There is significant pressure to be able to say how we are going to treat those claimants who establish they have a case, and all those outside the scheme who may have a similar fact pattern. So what they have asked for is a pro forma model of what the various outcomes could be – that is, what is the financial impact such that taking a step like recusal is 'worth it'.

It would be helpful to receive your thoughts on this but I think the following factors should be taken into account:

Original Expectations (and what a recusal would help us get back to)

- contract would stand in all material respects
- Horizon would be found to be robust (no systemic issues; bugs may cause losses but these can be identified and we would have a process to ensure that we didn't attribute losses where the cause was Horizon or a PO controlled factor)
- Limitation would apply (reduces group by 50%)
- Normal basis of assessment of damages (contractual notice period 3/6 months, no compensation for loss of office, other?)
- Would then look on a case by case basis – potentially repayment of amounts required to be made good, maybe interest? other 'reasonably foreseeable' loss?

These principles would inform a settlement, and would also apply to all others (outside the GLO) who sought relief

Post Common Issues:

More likely that:

- Horizon trial – risk of adverse findings re Horizon increases risk of breach
- we will be in breach of a contract due to implied terms: failure to investigate, proving actual loss, and ‘burden of proof’ will be most material.
- can’t rely on branch trading statement in the event of disputed losses – so must wear impact of in branch losses both historically and going forward. Currently c£5m pa and growing
- greater damages due to longer notice period implied, and greater exposure to requirement to repay those losses that we recovered (wrongly) from claimants (and others)
- Bias and ‘conspiracy theory re withholding evidence’ – will impact Limitation arguments
- Therefore greater numbers of postmasters within group and externally who could bring claim and greater quantum of damages – whether through litigation or settlement

Additional factors – other than Recusal and appeal, costs of trials should not vary.

On a settlement (say over the summer) the fact (or not) of recusal and the Horizon outcomes will be key to our negotiating strength. As it stands today, we would be in a worse position.

As ever, thoughts on the back of a postcard

Thanks

Jane



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