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STRICTLY CONFIDENTIAL & SUBJECT TO LEGAL PROFESSIONAL PRIVILEGEBRIEFING NOTEOverview

This note relates to the proposal to instruct Deloitte to prepare a written report in respect of the allegations made by former subpostmasters regarding (a) the integrity of the Horizon system, (b) the underlying accounting processes and (c) the adequacy of the training and support provided to subpostmasters. It is intended that Deloitte will be instructed to focus on (a). These allegations form the basis of four threatened legal actions notified to Post Office Ltd by Shoosmiths in letters before action. Shoosmiths confirmed on 18 April 2012 that these claims continue to be investigated.

Court proceedings were commenced in respect of a fifth claim which raised identical issues to those in the other four claims. This claim was struck out on procedural grounds. It does, however, demonstrate that a real and substantial risk of litigation exists.

Post Office Ltd are on notice that there are potentially a further 85 to 150 cases in respect of which Shoosmiths have or are in process of advising. It is, therefore, likely that further claims will be received. There is a high degree of probability that those claims will raise similar issues to those raised in the existing actions.

Issues for consideration

- To maximise the business' ability to claim privilege in the instructions to Deloitte and the report (so that those documents can be withheld from disclosure), the terms of reference must be tightly framed so that the report is restricted to considering the issues raised in the threatened legal actions only. If the terms of reference require Deloitte to consider other issues which are not raised in the threatened legal actions, there is a substantial risk that privilege would not apply.
- Careful consideration ought to be given to whether or not a report prepared on the basis of those narrow terms of reference will achieve the business' overriding objective. To be verified at a later date.
- The business should avoid documenting (including by email) the fact that Deloitte have been instructed, the terms of reference and/or the conclusions reached by Deloitte without prior reference to Legal Services. Those documents may not be privileged. Please note that simply copying Legal Services in on emails is not sufficient to enable privilege to be claimed in that correspondence. Any written communications on this issue should be directed to or originate from Legal Services.
- Please note that the business' right to assert privilege in a document is capable of being challenged.
- Consideration needs to be given to which version of the Horizon system Deloitte are being instructed to report on. Our understanding is that version changes have been made to the system, which may mean that Deloitte cannot address the allegations made in the threatened legal actions if those allegations are based on an older version. This will need to be considered with Fujitsu.

Reason
doing
because
integrity
of
Horizon
attached.
Assert
privilege.



Send to Alice

Steps taken to date

- Bond Pearce have been instructed to prepared the terms of reference and liaise with Deloitte regarding the preparation of the report. Input from the business will be required to scope the precise issues to be addressed by Deloitte. Gavin Matthews and Helen Watson of Bond Pearce are the lawyers dealing with this matter.
- Deloitte have confirmed that there have no conflicts of interest. Gareth James is the Partner dealing with the matter.
- Bond Pearce is considering directly with Fujitsu the potential impact of any version changes to the Horizon system. Those issues will then need to be addressed with Deloitte as part of the scoping exercise.
- Simon Baker has been tasked with managing this process from an internal perspective.

Next steps

- Bond Pearce are to contact Fujitsu regarding the terms of reference prepared for the proposed investigation which was to be carried out by KPMG.
- A meeting has been set up with Bond Pearce for Friday 20 April 2012 to begin scoping the terms of reference for Deloitte. James Davidson from Fujitsu will also attend by telephone.
- Input is required from the business as to the scope of the Deloitte report and its intended purpose. If the intended scope is outside of the issues raised in the threatened actions it may not be possible to claim privilege in that document. Input from Peter Stanley may be required on this point.
- A visit to P&BA (Product and Branch Accounting) has been arranged for early May 2012 to better understand the accounting process.
- It is intended that this process should be completed before the parliamentary summer recess (i.e. 17 July 2012).

It is proposed that further updates on progress will be provided on a fortnightly basis.

Prepared by Legal Services
20 April 2012