

## Message

**From:** Jane MacLeod [GRO]  
**Sent:** 08/04/2019 22:18:53  
**To:** Andrew Parsons [GRO]  
**CC:** Mark Underwood [GRO]; Rodric Williams [GRO]; Ben Foat [GRO]; Angela Van-Den-Bogerd [GRO]; Zoe Brauer [GRO]  
**Subject:** Postmaster Litigation - Options

Andy

AS discussed, Al and I had a meeting with Norton Rose on Friday to test our thinking on litigations outcomes. Those outcomes include:

- limiting our liability for compensation to those who actually have legitimate cases
- public recognition that Horizon works and can be relied upon
- ensuring that we have 'fit for purpose' contracts and ways of working
- maintaining the stability of the agent population, and
- bringing the litigation to a close in a way that limits 'follow on' cases, enables the business to continue to operate on broadly the current basis, and on a cost effective basis.

The following points came out of Friday's discussion, and I suspect will come up in the briefing on Thursday regarding appeal strategy:

- on the assumption that the Horizon litigation continues under Justice Fraser, is there anything 'symbolic' that we can say to him, that illustrates that we have heard the criticism of past practices and are listening?
- if a new judge is (eventually) appointed:
  - how do we ensure that we do not get him offside too?
  - do we have any options to change witnesses?
  - how do we steer the evidence to demonstrate that the current version of Horizon has addressed the issues associated with legacy Horizon?
  - how do we distinguish between 'systems issues' (with a view to demonstrating that Horizon is robust) from the way in which Post Office has historically responded to/used its output, where we may more readily accept criticism of past approaches?
- in relation to the Appeal of the Common Issues judgment:
  - what points can we concede?
  - what are the 'must have' points on appeal - this will need to be discussed carefully. Given the timeframe before an appeal is heard, we will need to adapt our current operating practices, documentation etc. Therefore we need to be clear that the purpose of the appeal is to protect legacy contractual provisions. Tom Cooper has already challenged whether provisions that make the agent liable for losses are morally defensible, and we need to consider these carefully and be able to explain the underlying rationale. Namely, that liability flows from the agency relationship given agents are custodians of public monies. Over-turning/abandoning the agency relationship would leave in doubt the basis on which agents hold cash and our right to have it repaid. Further there are now significant challenges in amending the contract in any material way that would be perceived to be favourable to Post Office.
- in relation to future trials:
  - redactions and claims for privilege need to be carefully reviewed
  - choices of witness need to be carefully considered
- there was also a discussion as to whether we should abandon our previous practice of not commenting on individual cases. this is finely balanced - we have intimated criticism of witnesses in both the Common Issues and Horizon trials and been criticised for doing so; however the public perception

remains that there is no justification for our stance. Personally, I think it would be more damaging to discuss these cases publicly, however we should consider what can legitimately be brought into evidence.

I suspect a number of these points will come up in the discussion on Thursday, so I wanted you to be aware. We can discuss tomorrow if that would be helpful.

Jane



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