

Minutes of Meeting

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GLO CONTINGENCY PLANNING GOVERNANCE	
Finsbury Dials / Telephone Conference	
[13 May 2019 ; 4pm]	
Attendees: Ben Foat (BF), Rodric Williams (RW), Zoe Brauer (ZB), Mark Underwood (MU), Angela Van-Den-Bogerd (AVB), Rawa Hussain (RH) From HSF: Alan Watts (AW), Kirsten Massey (KM), Tom Henderson (TH) From WBD: Andy Parsons (AP)	
Apologies: None	

Agenda

1	Operational Focused Updates
2	Litigation Focused Updates
3	AOB
4	Actions

1	<p><u>Operational Focused Updates</u></p> <ul style="list-style-type: none"> RW explained the purpose of these meetings: important call each Monday to identify work stream. ZB provided an overview of what's been happening on operational side of things. ZB – following the Judgment of the Common Issues Trial, what do we do with new operators? From a fortnight post-Judgment, covering communication was sent to all agents to reassure them that the Judgment didn't have an impact on the products and services and what POL is generally doing. Since then, there's been some thought about what to do now and we wanted HSF's input on POL doing anything with the contract- whether we need to do anything or should do anything, timings and how, with only new operators or look at existing contracts too. To determine best case scenario. RW- bearing in mind we can't make large changes when we are appealing this Judgment and saying it is wrong. The outcome of the appeal would need to be factored into any change. So doing nothing is an option. HS – we need to look at the short and long term options – in the long term, we should be looking at what is the best form of the contract going forward – the agency contract is an old contract so in the short term we may want to rewrite it. Draft a new one and test it. Short term: do nothing or make light touch amendments e.g. make the implied clauses, explicit clauses. Can address some of the Judgment and puts us in a better place with the existing contract and with new subpostmasters. May be better in the long term to introduce a new contract. RW- Important to remember that if we do start making changes to the contract, we need to be compliant with the Judgment and if we start giving some concessions, are we saying that the contract was not a good one to start with? How will that be evidenced in front of a judge in the Court of Appeal?! HS – the changes need not be significant – we can add things we have already agreed to, such as the implied terms of co-operation and good faith and turning them to express terms. It's a matter of being sensible. RW- agree. ZB- the next consideration is what do we do with our contracts with our commercial partners? That has already been shared with you but this is the next stage- is this contract to be viewed in the same way? HS – yes - we are not changing the contract, just making those terms express going forward until
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	<ul style="list-style-type: none"> • we issue a new contract or until we get to that position. So expressly saying this is not a relational contract and there is no implied terms of good faith. • BF- this sounds sensible. • RW- in terms of deliverables as a work product – there is a comms piece and concern from colleagues that we are not recognising duty of good faith so we need fluffy language around this. • BF- the engagement letter with HS is also outstanding – HS’s role is for advising the Board and not narrow remit of litigation but also broad operational remit. • RW – engagement letter is on my desk. • ZB – we have a new network director, Julie Thomas – she has set up a change programme called ‘Network Operational Transformation’ looking at the life cycle of an agent. They have broken the programme down into each step of that journey. This programme overlaps with new processes in terms of what the Judgement requires. New programme will roll out in July. Main areas of focus have been losses, suspensions and terminations. Conducting a series of workshops to ascertain processes and set out best practice. So that’s next priority. • BF – we will chat how we can on board you (HS) as there has been a lot of work delivered and new policies revised and amended and so forth. We have taken on board new requirements. We will hand over documents so you can support us in operationalising it. • ZB- will get these documents over and can discuss again.
2	<p><u>Litigation Focused Updates</u></p> <p>AP (joined at 4.30pm) comments:</p> <ol style="list-style-type: none"> <p>1. Common Issues</p> <p>The recusal application was rejected over the weekend by the Court of Appeal. Ordered to file skeleton argument on Friday for permission to appeal the Common Issues Judgment.</p> <ol style="list-style-type: none"> a. Permission to appeal – timing of hearing (update from this morning) File application to appeal on Wednesday. b. Common Issues costs Hearing on 26 May- costs reserved. c. Recusal costs Hearing on 26 May (bundled up with common issues costs) Open basis, Freeths want 300,000. We have offered 190,000. <p>2. Horizon Issues – team have been working on the basis that Horizon trial is ongoing. Restarts on 4 June.</p> <ol style="list-style-type: none"> a. Worden 3 – our expert – we didn’t want another report but he has an obligation to the court and he believes he has a new way of looking at things. His report has been sent to the other side on a without prejudice basis. b. Preparation of Coyne XX and closings – focus point of the horizon trial. Closings – a lot of ground work has been done and needs to be tied up. c. Con with Counsel- within next week, good idea to sit down with counsel and look at the evidence so far and where we think the Judgment may go. We promised we would keep the evidence under review. Good to set up for 2 weeks’ time. (BF- consider continuity should we not be able to trade i.e. worst case) <p>3. Further Issues Trial</p> <ol style="list-style-type: none"> a. Timing of trial / new directions needed –trial 3 (Nov this year). Gone off the table but judge will return to this maybe next Thursday. It’s premised on common issues so it may be stayed or adjourned depending on the appeal. If he decides to press it through, we need to recollaborate all the directions or we need to look to move the trial out to Jan/Feb next year. Claimants may be on board but we won’t know until we ask them. b. Preparation work update – rework out table of directions. Preparing witness evidence for November trial. Work has been going on now for several months. Not sure if trial

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	<p>c. will/ will not go ahead.</p> <p>4. Settlement planning – a few weeks back, work begun to attempt to try and place a better valuation on the claim if we want to make any attempt at settlements. Claimants claim values are sketchy. Region of 30-80/90 million. One piece of work we are doing is building on valuation – we have a briefing note on this.</p> <ul style="list-style-type: none"> • BF- is there a clarity around quantum? I would encourage in your note to strip it back – if you had to make a quantum of assessment and this may not be reflective of where the claimant is. • AP – we will think of settlement from a non-legal perspective: If I was a PMR what would I take right now to take this all away? Paper is to come out end of this week. • BF- our chair holder has made a request to summarise. Positional piece. He has asked for implied terms table. Rod may need support with this.
3	AOB None.
4	Actions – see below

Actions

No	Description	Owner	Status
1	Advice Note on the options available for POL in relation to whether any changes should be made to existing and new contracts both with agents and commercial partners	HSF	
2	Engagement letter to be provided to HSF	RW	
3	Comms piece	RW	
4	All relevant documents to be provided to HSF	ZB	
5	Papers on settlement options	WBD	

Author of Minutes: RH

Date: 13 May 2019