

**Stephen Dilley**

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**From:** Stephen Dilley  
**Sent:** 10 November 2006 10:23  
**To:** 'mandy.talbot@' **GRO**  
**Cc:** Tom Beezer  
**Subject:** P.O's counterproposal to Mr Castleton  
**Attachments:** LFORM\_1153255.PDF

Dear Mandy,

Just to confirm Richard has put our without prejudice counter offer to Mr Castleton's barrister i.e:

1. Judgment against Mr Castleton for full amount of claim of £25,858.95 plus interest;
2. Payment of costs £186,000, or our costs to be assessed on an indemnity basis with a substantial up front payment on account of an amount to be agreed.
3. Castleton resolves rent position directly with Dorothy Day (current subpostmistress);
4. P.O don't employ assistants in the P.O branches, so payment of Christine Train's is for Mr Castleton and Dorothy Day to resolve i.e P.O is not going to get involved;
5. P.O to prepare letter in wording to be agreed that it doesn't allege dishonesty vs Mr Castleton;
6. Castleton to prepare letter/statement in wording to be agreed that he withdraws all allegations about Horizon; and
7. Payment of above sums within 14 days.

They are taking instructions but apparently didn't sound too impressed. I think costs may be a sticking point at the moment. I anticipate the P.O's view is that the most important thing is to get judgment for the full amount (to send out a clear message) and to negotiate the best possible costs recovery in the circumstances in the knowledge however, that

- (i) If we go to trial and win, a costs capping order may be made and costs reduced significantly on assessment; and
- (ii) (more significantly) in any event Castleton may not have sufficient funds to pay any costs award made against him.

However, as I explained to Richard, we told them what the costs would be months ago, so they shouldn't be surprised. Also, they turned down our ADR offer and could have saved costs by settling earlier, so they've only got themselves to blame. Just a few points for you to consider:

(a) What rate of interest would the P.O want on the judgment debt - would the P.O be prepared to accept 1% over base?

(b) If Castleton agrees to pay indemnity costs to be assessed, what payment on account would the P.O seek pending the assessment? Should we say £100,000?

(c) On 17 January 2006, Rowe Cohen rejected the P.O's CPR Part 36 offer to accept payment of £24,750 in full and final settlement of the claim and counterclaim, including interest and costs. However as you know the Court rules allow Mr Castleton to accept that Part 36 offer now provided either he agrees costs with us, or he gets the Court's permission (in which case the Court would make an order as to costs). If Mr Castleton decides to do this, the P.O would at least get more in relation to the claim than £22,350 (his opening offer). In that event, I would also expect the Court to order Mr Castleton to pay the P.O's costs from around 17 January onwards, to be assessed if not agreed. There would be argument whether this would be on the standard or indemnity basis. Mr Castleton's lawyers have not raised this possibility (it may not yet have occurred to them), but we should just be aware of it.

10/11/2006

(d) The difference between Castleton's proposal to pay £22,350 and the full amount of the claim is just over £3,500. From now to trial, on a rough estimate I can see the P.O easily incurring further costs of approximately £130,000 (Bond Pearce, expert and Counsel). Even if the P.O wins and is awarded costs without a capping order, its costs would be assessed and on assessment the P.O may be awarded 60% to 70% of its costs. This could mean that the irrecoverable element of just those costs that are incurred between now and the end of trial could easily be around £40,000. This would more than cancel out any "gain" of the extra £3,500 the P.O might make if it gets judgment. Of course, balanced against this is that there would be a significant commercial advantage to the P.O to having a reasoned judgment in its favour: it would send out a clear message to other subpostmasters.

(e) Richard gets the impression (and it is only that) that Castleton will personally have to fund any settlement. Accordingly, whether settlement is reached may well depend on what funds Castleton can raise. Just a reminder about the asset check we previously did (copy attached) showed that Mr and Mrs Castleton jointly own 14 South Marine Drive Bridlington and that they purchased it for £218,000, in October 2003 with a Royal Bank of Scotland mortgage. Mr and Mrs Castleton also own a motor vehicle, but the make and model are unknown. Given that Mr and Mrs Castleton purchased the property with the assistance of a mortgage 2 and a half years ago, there may not be a great deal of equity, but we do not have sufficient information to determine this. If you want, I can have our agent make enquiries to as to how much the building at Marine Drive would currently be worth, as it may have increased in value from £218,000. In my experience, you only tend to get a rough figure from these sorts of enquiries, but it might be helpful to have an indication because it would show the approximate minimum equity and thus, what Castleton might at a minimum be able to afford to pay the P.O.

I will update you when we get Mr Castleton's response to the counter offer.

Kind regards.

Stephen Dilley  
Solicitor  
for and on behalf of Bond Pearce LLP

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