



Briefing Note

1. HEADLINES

1.1 First trial in November 2018 relating to contractual issues.

- 1.1.1 **Key issue:** The Claimants are trying to get prejudicial material in front of the Court about how Post Office handles losses in branches. This may colour the Judge's view of Post Office, leading him to believe Post Office to be an unreasonable organisation and causing him to interpret the contract in a way that gives more protection to postmasters.
- 1.1.1 **Action:** We are opposing this at every Court hearing on the ground that this material is inadmissible evidence and so far the Judge has supported Post Office's position. Once all evidence has been filed (Aug 18) we may ask the Court to strike out any inadmissible evidence before the trial begins.
- 1.1.2 **Next milestone:** Claimants to file claims on 6 Lead Cases in mid-April and Counsel's opinion on the merits of Post Office's legal position due at end of April 2018.

1.2 Second trial in March 2019 relating to Horizon.

- 1.2.1 **Key issue:** The risk with a discrete Horizon trial is that the Court may find that there are bugs in the system (which is likely – it is a complex system) but be unable to say whether those bugs are material without understanding the wider context of how Post Office / a branch operates. From a legal perspective this risk is a manageable part of the litigation process but it may lead to adverse media headlines.
- 1.2.2 **Action:** We have opposed this trial, but it was ordered by the Judge against Post Office's and the Claimants' wishes. Our IT expert witness is meeting with the Claimants' IT expert and will attempt to frame the scope of the trial in a such way so as to minimise this outcome.
- 1.2.3 **Next milestone:** Meeting of IT expert witnesses in April 2018.

1.3 Costs

- 1.3.1 **Key issue:** The double trial process will incur significant legal spend, estimated at £5.5m from now to end of November 2018 trial. The Claimants are seeking to cap Post Office's recoverable costs at £2.5m. If the Claimants obtain a cap on Post Office's costs this will significantly reduce their risk exposure encouraging them to fight the litigation for longer.
- 1.3.2 **Action:** Post Office has proposed a compromise of tighter costs management (but not a cap) in return for the Claimants putting up security to ensure that Post Office's costs get paid if it is successful.
- 1.3.3 **Next milestone:** Hearing on 30 April 2018 to about cost capping and security if no deal can be reached.

1.4 Overall strategy: [Jane / Rod – can we discuss this on the call later? I think it may be worthwhile starting to warm up the board to the idea that a settlement may be needed at some stage but I get that this may be controversial.]

- 1.4.1 **Key issue:** Even if Post Office has a positive result in November 2018, this will not stop the litigation. It will continue into March 2019 and beyond unless a settlement is reached with the Claimants. The parties have been ordered to mediate after the November 2018 trial and entering negotiations off the back of a good trial outcome would put Post Office in a strong negotiating position.
- 1.4.2 **Action:** Post Office to begin planning for settlement discussions with the Claimants to see if a modest settlement payment may be sufficient to close down this litigation.
- 1.4.3 **Key issue:** If there is an adverse outcome in November 2018, this should not cause an immediate impact on Post Office's business but long term it will affect its commercial operating model.
- 1.4.4 **Action:** Post Office could (and almost certainly should) appeal any adverse decision. A mitigation plan will be put together following receipt of Counsel's merits opinion.
- 1.4.5 **Next milestone:** Counsel's opinion on the merits of Post Office's legal position due at end of April 2018

2. PREPARATION FOR NOVEMBER 2018 TRIAL

- 2.1 **Selection of Lead Claimants** – the November 2018 trial is to be heard by reference to 6 Claimants, who have now been selected. Alan Bates, Louise Dar and Pamela Stubbs were selected by the Claimants; Elizabeth Stockdale, Mohammed Sabir and Naushad Abdulla were selected by Post Office.

The process for selecting these Claimants involved a detailed review of nearly 200 Claimants by subject matter experts at Post Office, WBD and Counsel to identify Claimants who represent the broad spread of contracts operated by POL, have a good document trail and have minimal prejudicial features.
- 2.2 **Factual Matrix** – prior to the November 2018 trial, the parties are required to agree a statement of facts which explain the circumstances in which contracts between Post Office and postmasters were entered into. A first draft has been produced by the Claimants and WBD are in the process of responding to this.
- 2.3 **Disclosure** - there have been two Court hearings to decide the scope of documents which should be disclosed by Post Office to the Claimants. It has been agreed that disclosure will be provided in stages and the types of documents provided should be more limited than those sought by the Claimants. To date, Post Office has disclosed 33,000 documents and there is ongoing work in preparation for providing further disclosure.
- 2.4 **Witnesses** – WBD have conducted the first round of interviewing approximately 15 Post Office employees who hold information which is relevant to the November 2018 trial. Work will continue with these individuals to produce statements of their evidence.

3. PREPARATION FOR MARCH 2019 TRIAL

- 3.1 **Appointment of expert** – Robert Worden of Charteris has been appointed as Post Office's IT expert. Robert has done a significant amount of reading in and produced a plan for the first stage of his work. In essence, he will produce a "foundations report" which sets out how Horizon works by the end of May 2018. This will give him a firm platform to refute the points made by the Claimants' expert in his main report and a large part of the foundations report will be folded into Robert's main report.

- 3.2 **Trial Issues** – agreement has been reached on the issues that should be decided at the March 2019 trial. The Claimants sought a wider drafting of the issues which include the financial reconciliation process (ie. how Post Office reconciles Horizon's record against Post Office's clients records), however the issues have been narrowed so as to purely relate to topics concerning only Horizon itself.
- 3.3 **Horizon demonstration** – both parties IT experts and the Claimants' solicitor / Counsel have been provided with a demonstration in the model office of how Horizon operates and provided with a briefing by Fujitsu.

4. UPCOMING EVENTS

- 4.1 **Pleadings** – the Particulars of Claim for the 6 Lead Claimants are to be provided on 13 April 2018, with Post Office's Defences due on 18 May 2018.
- 4.2 **Disclosure** – further disclosure of documents which relate to the 6 Lead Claimants, documents required for the November 2018 trial and technical Horizon documents will be provided to the Claimants by 18 May 2018. It is expected that approx. 100,000 to 150,000 documents will be disclosed.
- 4.3 **Witness evidence** – to be served on 12 August 2018.
- 4.4 **Expert** – by 22 June 2018 the parties' IT experts are to commence their meetings and discussions to identify and where possible, reach agreed opinions on those issues (we expect that the first meeting will take place in April). After that, the key dates are:-
 - 4.4.1 18 July 2018 - Claimants must serve a provisional / outline document setting out the nature of their allegations in relation to the Horizon Issues;
 - 4.4.2 31 August 2018 - the experts must produce a joint statement which sets out the issues on which they agree and those on which they don't agree (with a summary as to why);
 - 4.4.3 14 September 2018 - Claimants to serve their IT expert report; and
 - 4.4.4 2 November 2018 - Post Office to serve its IT expert report.