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Horizon Issues Trial Judgment Contingency Planning Update

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Meeting date: 4 December 2019

Context

An embargoed version of the Horizon Issues Trial Judgment was received on Thursday 28 November 2019. Broadly, it has been found that the Horizon system in use today (HNG-A) is “relatively robust”, the robustness of the previous version of Horizon Online (HNG-X) was “questionable, and did not justify the confidence placed in it by Post Office in terms of its accuracy” and Legacy Horizon (2000 to 2010) was “not robust”.

As part of contingency planning, we have in place capability to detect and respond to impacts (postmaster; client; customer) should they materialise. Having planned for a ‘worst case’ scenario, our expectation now is that the post office network will continue to operate normally and it will be ‘historic claims’ that potentially will have the greatest impact - in the short term through an increase in postmaster queries into the Branch Support Centre; and then how we manage/resolve claims as a result of the Horizon Issues Judgment and the recent refusal of Post Office’s application to appeal the Common Issues Judgment.

The purpose of this paper is threefold:

- To provide assurance that we are ready to respond to operational impacts as a result of any immediate reaction to the Horizon Issues Judgment, including having an extensive communication strategy in place to minimise any reputational risk.
- To signal the anticipated ‘historic claims’ that may flow from the Horizon Issues Judgment and the Court of Appeal’s refusal to grant Post Office permission to appeal Common Issues Judgment.
- To set out our emerging thinking on managing and resolving such claims.

Questions addressed in this Report

1. Is the business appropriately prepared to respond to the likely reaction from the Horizon Issues Judgment, once it is handed down?
2. What sort of ‘historic claims’ could the Horizon Issues Judgment and the recent decision from the Court of Appeal to refuse Post Office permission to appeal the Common Issues Judgment prompt?
3. How do we best manage and resolve the anticipated ‘historic claims’ and what are the immediate policy decisions required?

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4. Should we announce as part of our public response to the Horizon Issues Judgment being handed down on 16th December, our willingness to resolve issues and publicise our approach to investigating new and historic cases?

Conclusion

1. As a result of our contingency planning, we are ready to identify and respond to the likely immediate reactions to the Judgment and any subsequent operational impacts. Our external and internal communication material is extensive and able to quickly be refined to suit the need. Whilst we expect our post office network to continue to operate normally, some postmasters may be concerned/confused by some of the findings included within the Judgment and turn to Post Office for confirmation that the Horizon system they are using is fit for purpose. They are likely to question the validity of previously settled discrepancies and TCs whilst using older versions of Horizon (pre-HNGA).
2. We anticipate 'historic claims', either in a piecemeal fashion or as part of a secondary group, from:
 - Current and former postmasters who have repaid/are repaying shortfalls
 - Current and former postmasters who have been suspended without remuneration
 - Former postmasters questioning whether their notice period was appropriate.
3. The Horizon Judgment makes a distinction between current version of Horizon (HNG-A) and the previous versions (Legacy Horizon and HNG-X). This is helpful as it substantially mitigates the immediate operational risk to the network. There is merit in applying this distinction and categorising claims that arise out of events post HNGA going live in a branch ("new claims") and those that arise out of truly "historic" events. The emerging thinking is that new claims are to be resolved through the recently introduced Operations investigation processes and historic claims are investigated by the Post Office case review team within LCG.
4. In his findings the GLO Managing Judge has consistently found Post Office to have not been open and transparent and to have been reluctant to investigate fully the claims that Horizon caused discrepancies. We could demonstrate that we have listened and genuinely want to reset the balance by taking a proactive approach to resolving new and historic claims by communicating this as part of our response to the Horizon Issues Judgment when it is handed down on 16th December.

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Input Sought

The GE is asked to note the contents of the paper, the potential impact of the anticipated 'historic claims' and to advise whether they are in agreement with the proposed approach to managing the 'historic claims.'

Input Received

Operations senior team

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Is the business appropriately prepared for the likely reaction from the Horizon Issues Judgment, once it is handed down?

1. Post Office defined a set of minimum requirements which needed to be in place in order to be 'ready' to respond to a potential adverse judgment, namely:

- i. To have a **monitoring capability** in place, in order to quickly identify impacts across the network.

Capability is in place and rehearsed to monitor and report twice daily on the following: unplanned branch closures, postmaster sentiment, cash declarations / branch conformance, media articles, customer complaints, Branch Support Centre (BSC) call volumes, relationship/client reaction, postmaster resignations.

- ii. To have **response processes** in place that will minimise any disruption to customer service, with a particular focus on vulnerable customers.

- New processes have been designed or existing response processes enhanced to ensure impacts can be managed coherently. For example, a virtual team has been established to coordinate and mobilise Comms, Supply Chain, Area Managers and Branch Support – should branches refuse to open.
- Where additional resource may be required (e.g. BSC), surge resourcing plans are in place.

- iii. To have a **rapid response team capability** in place and rehearsed, able to implement response measures and react to a rapidly evolving and unpredictable situation.

A cross-functional strategic Crisis Management Team is stood up, rehearsed and able to respond to a range of scenarios as well as managing more complex strategic challenges, with the appropriate MI feeds and escalation points to the GE.

- iv. To have a **communication strategy in place**, designed to protect stakeholder confidence in the Post Office.

This is in place and will look to quickly move the story from criticisms of historic practices to communicating forward-looking proposition to postmasters designed to improve their commercial and day-to-day lives.

2. A very high level view of how Post Office's response is included at **Appendix 1**. Our view of the likelihood of each these risks crystallising has not changed since receiving an embargoed version of the Judgment and we believe that we are ready to identify and respond to the likely immediate reactions to the Judgment.

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What sort of 'historic claims' could the recent decision from the Court of Appeal to refuse Post Office permission to appeal the Common Issues Judgment the and Horizon Issues Judgment cause?

1. Justice Coulson's refusal to grant Post Office permission to appeal Justice Fraser's interpretation of the postmaster contract, means that this interpretation stands as law. As such, a number of terms are implied – because they are consequential on the finding of a relational contract and or because they are necessary to give business efficacy.
2. Of the various terms implied, those which will give us the greatest issues are:
 - While in principle agents can be responsible for losses, POL bears the onus to prove that there has been a loss (can only recover a 'true' loss – that is a physical loss of cash or stock, or a real financial loss e.g. payment to a client), and that it was caused by the fault of a postmaster or his / her assistant.
 - We must be able to demonstrate that we carried out a reasonable and fair investigation into the loss (proportionate to amount lost) as to the cause and reason for any alleged shortfall and whether it was properly attributable to the postmaster.
 - Branch Trading Statements cannot be relied upon as an account where there are matters in dispute. The Judgment does not address the status of the account where there is no dispute. This may give us operational issues going forward.
 - Whilst the right to suspend postmasters remains, there will be certain process changes that will be required. The key, resolved, issue was that we could not withhold payment while a postmaster was suspended. There is also a requirement to investigate prior to any suspension.
 - Limits on termination rights – contractual notice periods are expressed as 'not less than' 3 or 6 months. The Judge has determined that we therefore have a duty to consider the appropriate notice period in each case; and we cannot act arbitrarily or capriciously, or where we are in breach in respect of matters which gave us right to suspend / terminate.
 - We retain the right to amend contracts unilaterally but all amendments must be reasonable.

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3. Though the Operations team do not expect these terms to impact on Branch Analysis, Audit or Security Operations; the concern which is held is that 'historic claims' (particularly in respect of the below) could follow - either in a piecemeal fashion or as part of a secondary group:

- From current and former postmasters who have been suspended without remuneration and or repaid shortfalls; and
- From former postmasters questioning whether their notice period was appropriate.

How do we best manage and resolve the anticipated 'historic claims' and what are the immediate policy decisions required?

1. 33 historic claims have been received by the Operations team since Common Issues Judgment in March 2019. The agreed view of Operations and Legal is that:

- We should split the 33 historic claims into two buckets. Claims that arise out of events after the introduction of HNGA at a branch ("new claims") and those that arise out of truly "historic" events.
- New claims are managed by Operations through their new investigation processes. Lawyers may need to input into some final decisions.
- Historic claims to be investigated by Case Review team within LCG. Lawyers then to input with final decisions to be escalated to a decision group (members TBC) for approval.

Should we announce as part of our public response to the Horizon Issues Judgment handed down on 16th December, our willingness to resolve issues and publicise our approach to investigating new and historic cases?

1. In order to set up a process for investigating these and future 'historic claims' which is capable of resolving issues complained of, thought must be given to its governance, resourcing and Post Office overarching approach. For example:

- Will all current and former postmasters be eligible to bring a 'claim' regardless of whether, for example, it may be time barred, they have signed a prior settlement agreement (e.g. as part of NT) or been subject to a criminal conviction?
- Will the 'scheme' be advertised and potential applicants (e.g. Postmasters who have previously been suspended without remuneration or who have repaid shortfalls) be written to; or will a reactive approach be adopted?

2. Although it is advisable to wait until January / February next year before making final decisions to avoid risk of setting precedents in case there is a flood of claims

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off the back of the HIT judgment (and refusal from the Court of Appeal), Post Office does need to prepare for how it will respond to enquiries from the media and or Parliament.

3. A workshop between Legal and Ops is scheduled for later this afternoon (4 December 2019) to begin the thought process necessary to appropriately 'frame' any 'historic claims' investigation process. This will be brought back to GE for approval along with estimates of the potential liability.

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Appendix 1 Operational Response Plan

The Response Plan is a live document detailing how Post Office will detect, mitigate and respond to immediate business impacts with the processes upon which it is reliant, embedded within it. The table below provides an aggregated view of how Post Office will respond to the most significant potential impacts which could occur across the network following receipt of an adverse Judgment.

Impact	How will we detect this?	Key responses	Key communication-based responses
Coordinated or widespread branch closures impacting customers <i>[likelihood thought to be low]</i> .	- Monitor HORice log-ins - Supply chain reports - Area Manager reports - NBSC reports - Customer complaints team reports This data is compiled into a single report, including baseline unplanned branch closures and removing planned or scheduled branch closures.	If closed branch is located near to alternative branches/services: - Redirect customers to nearest branch (hiring taxis / minibuses if required) and update Post Office website so customers know which post offices are open - Inform supply chain to increase cash orders to nearby branches who remain open and may receive increase in footfall If closed branch has no Post Office branch (or Payzone outlet for bill payments) within 3 miles but is nearby to competitors: - Redirect customers to alternative providers/competitors If closed branch is the only branch/service within 3 miles: - Consider deployment of pop-up post office (where available) to region in order to provide continuity of service to vulnerable customers for SGEIs - Consider deployment of vans (where available) if location is within distance of current van routes	- Inform customers through social media/email teams to redirect them to nearest available services - Area managers to engage postmasters to determine length of closure expected (temporary or long-term) and request re-opening
Calls for or enforced immediate legal, operational, or governance reaction	Media coverage and/or demands from key stakeholders etc	Legal team have separate approach to manage requests to settle / historic claims	Core response communication playbook will be used to defend Horizon and remind stakeholders of why Horizon fundamentally does work

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Impact	How will we detect this?	Key responses	Key communication-based responses
(e.g. settlement, independent inquiries etc). <i>[likelihood thought to be medium/ high].</i>	- requesting immediate settlement / Inquiry - Judge makes comment on specific bugs, known errors or technical issues	- IT response team set-up to respond to, escalate and fix specific technical challenges that may be raised in Judgment. Any issue will automatically be raised as P1 and escalated to Fujitsu - IT Team to have reviewed all processes to ensure they are appropriately documented, including the 'bug' identification, escalation and communication process and pro- active scanning for issues process.	'New Normal' messaging to be used to demonstrate the positive and tangible changes being made by the business
Significant increase in postmaster queries, questions and claims into branch support centre. <i>[likelihood thought to be high].</i>	- NBSC call volumes - Area Manager – sentiment monitoring and queries	- NBSC surge resource plan invoked to increase tier 1 headcount by a maximum of c.30 people. This will mean more NBSC call handlers can manager tier 2 calls - Area managers are equipped with information regarding Horizon troubleshooting if Postmasters have concerns on reconciling. This will reduce the burden on NBSC as Postmasters can use the guide to self-diagnose	- Areas managers will escalate challenging questions/queries to the comms team for a formal response - Area managers equipped to reassure postmasters on Horizon - NBSC equipped to reassure and manage/triage queries from postmasters
Retail partners refuse to sell products or operate Post Offices. Commercial clients terminate contracts. <i>[likelihood thought to be low].</i>	- Relationship manager alerts RRT / GE - Corporate affairs - Communications team	- Legal team have specific response process to address contractual issues raised by this scenario - If required, branch closure response process will be invoked to provide continuity of services where required	- Relationship managers and GE to be equipped with Horizon defence messaging detailing the accuracy of the specific reconciliation process with each commercial partner. - Long-term strategic engagement required to manage commercial partner/client expectations and future relationship with Post Office
Prolonged top tier negative media	- Corporate affairs - Communication team	Comms team to continue to monitor and manage story.	- All colleague comms to provide reassurance - Appropriate spokesperson used.

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Impact	How will we detect this?	Key responses	Key communication-based responses
coverage extending beyond initial news moment to human interest stories. <i>[likelihood thought to be low/medium]</i>			• Response will focus on strategy for people to “maintain confidence” in the Post Office • New Normal’ messaging to be used to highlight the major changes underway at the Post Office

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Nick Read, Owen Woodley, Shikha Hornsey (item 1), Ben Foat, Lisa Cherry (item 1)

Apologies: Al Cameron, Debbie Smith

Other attendees:

Veronica Branton

Angela Van Den Bogerd (item 2)

Tim Perkins (item 2)

Nick Beale (item 2)

1.1 Mediation – Ben Foat**Two elements to the settlement:**

Financial – no further offers made (the claimants were at £65m and we were at £40m, plus the £5.5m of costs we had already been required to pay by the Managing Judge). There were still matters to be debated and the mediation would resume on 5 December 2019.

Non-financial – BF would circulate a note of the list of non-financial issues under discussion; he had sought feedback from those in the business responsible for these operational areas to get a view on feasibility of implementation. We were engaging on all of the 15 issues. **Action: BF**

List of measures sought by the claimant:

1. *Statement acknowledging previous treatment of Postmasters.* This would be a two way statement so would acknowledge the cooperation of the current leadership team at POL and we would seek to draw a line under the position of the past.
2. *Emergency funds* – ability for those claimants in immediate financial distress to be able to access money. We were comfortable with this proposal as long as it formed part of the overall settlement and the fund was not administered by us.
3. *Support programme for Subpostmasters who were in a similar position to the claimants.* This was a more difficult issue for us to deal with. We said we could talk through how we are and would be providing additional support to Subpostmasters to make operating a Post Office simpler and easier. We had confirmed that we would comply with the Common Issues judgment and had run through our preparations for this
4. *Amnesty for shortfalls.* This posed difficulties for us. We did not know how many Subpostmasters might report shortfalls or what the sums involved would be. The duty of good faith was mutual and we would want to reserve our position if there were real capability and trust issues in connection with any Postmasters reporting historic shortfalls
5. *Agreement not to enforce Subpostmaster debts in advance of the settlement.* We had confirmed that we would not seek to do so
6. *Agreement to expunge disciplinary records.* Subpostmasters were not employees and we did not keep disciplinary records. POL only held information about when individuals were/ had been Subpostmasters. This issue had been raised because the reputation of a number of the claimants had been tarnished. We could provide a purely factual reference for these individuals but they could also refer back to our jointly agreed statement which would reference historic failings

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7. *Support programme for claimant Subpostmasters in post* – this would include help for those who would like to exit the business post settlement. We should be able to commit to being able to help this category of claimant Subpostmasters them in some way
8. *Consultation request* – the claimants were keen to be consulted on and feed in their views about Post Office on an ongoing basis. We were happy to listen to these views but would not bind ourselves to implementing any proposals. We had asked how the claimants envisaged this consultation process working. We already had stakeholder consultation groups and our consultations had to be representative and not limited to 555 individuals
9. *Mental health support for the claimants* – this issue had the potential to link into Starling and workers' rights claims. It might be possible to treat this in the way proposed for emergency funds where a portion of money was carved out from the settlement for the claimants to administer. The sum proposed could be the tip of the iceberg of claims in this area. BF would like to explore costs on this further and get some quotes from our broker
10. *Agreed approach on the CCRC* (this relates to the convicted claimants). We could seek to settle a civil case but not the criminal cases. We could not be seen to undermine the criminal convictions but could say that we would be taking external QC advice on this issue and would act on that. The claimants were seeking assurance that we would not make things difficult for them if they sought to overturn their cases
11. *Bankruptcy issues* – we were comfortable with the claimants' proposals
12. *Outstanding charges* – there had been discussions on this issue and we could reassure the claimants that we would not pursue outstanding charges once a settlement had been reached
13. *Agree escalation routes for disputes* - we were happy to for mediation and arbitration to be the first steps in any dispute rather than going through the courts. It was noted that we adopted this approach with NFSP in practice but is was not a formalised process.

1.2 Work flowing from the Common Issues trial judgment

BF noted that even if we could reach a settlement and avoid further trials a great deal of work would be needed to operationalise the Common issues trial judgment and to respond to the Horizon Issues trial judgment. The provision of assurance to Subpostmasters and the courts was discussed. It was **AGREED** that internal audit would need to be involved and that we would also need an external third party to assess progress so that we not "marking our own homework". The legal team would need to translate what the requirements meant in practice and that would need to be implemented operationally. Updates to the Postmaster Litigation Subcommittee and Board would need to shift focus to operational issues.

1.3 Horizon Issues trial judgment

It was noted that it was positive that the current system was regarded as robust but difficult that previous versions of the system were not regarded as robust. This meant that we were likely to receive additional claims. We would need to use the CLIVE system to assess such claims and this would be a major piece of work.

1.4 Tomorrow's mediation:

- Agreement of the 15 issues
- Further discussions on the financials
- Discussions were likely to run into Friday. There was a question of what Government would wish us to announce in advance of the general election but both the claimants and POL would want to make the announcement to be made as soon as possible. Patrick Bourke

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would be talking to BEIS. The communications strategy for Friday was being worked through. There would need to be clear water between a settlement announcement and the embargo on the Horizon judgment being lifted.

- Embargo on Horizon judgment would end on 16 December 2019.

1.5 Further issues

We would be starting the future funding discussions with Government. The settlement would drive costs and we would need think through how this affected our funding proposals. We would need to review the change programme for GLO following the decisions on appeal, the Horizon Issues trial judgment and mediation to make sure we were adequately resourced for the work required.

2. Horizon planning

The Horizon Issues trial judgment had been positive in finding the current Horizon system reasonably robust but had found previous versions of the system not to be robust. It was not thought that the judgment would have a significant impact on how the network operated but could drive historic claims.

We anticipated claims from Subpostmasters who had been suspended without pay now that our application to appeal the Common Issues trial judgment had been declined. We were working through the numbers involved but these could amount to circa £30m over a 20 year period. It was recognised that we needed to be open and transparent in communicating our approach to addressing these historic claims but needed to set realistic expectations on how they would be processed. We would need to revisit whether there were sufficient funds in the budget and whether we had the right capacity and capabilities within the teams to meet claims coming through. It was noted that the tone of communications would be critical.

The teams would be working through requirements flowing from the Common Issues trial judgment including creating new contracts and all the processes that would stem from this change. The legal team would be translating the rulings into the operational outputs required.

It was noted that Andy Kingham held weekly calls with the area managers and involved the operations teams. There was a mechanism for questions to be submitted which were responded to each day. It was **AGREED** that the communications to the field teams and the operations team on the mediation and the Horizon Issues trial judgment needed to be in writing and not by conference call alone to ensure consistent messaging.

The rapid response team would be in operation from 16 December 2020.

Nick Read, Ben Foat and Patrick Bourke would be working through the stakeholder and communications activities that needed to take place in the run up to 16 December 2019 and the sequencing of these. Ideally a settlement would have been announced in advance of the Horizon Issues trial judgment being published. Our communications and stakeholder engagement were going to be critical.