



Commercial Guidance - Applicability of Liquidated Damages to the Red Alert that occurred on 27/07

Incident Summary	The deployment of an incomplete set of Reference Data updates on the evening of 26/07 resulted in PIN Pads across the estate being unable to perform Banking Functions from start of business until approximately 14:30 on 27/07.
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Liquidated Damages and the Contract in General

Contract defines the Liquidated Damages in Clause 18 of the Contract. Liquidated Damages are a *“reasonable and genuine pre-estimate of the loss likely to be suffered by Post Office”*

Liquidated Damages Thresholds (where LD's are triggered) is defined in Schedule C1 para 1.2.2 as *“the level of Service which, if not achieved by Fujitsu Services, shall give rise to payment of liquidated damages by Fujitsu Services (the “Liquidated Damage Threshold” or “LDT”). Payment of liquidated damages notwithstanding, a failure of any LDT shall not (on its own) constitute a Default;”*

LD's are included in the individual Service Descriptions.

There is a cap introduced in Para 2.7.2: *“The liquidated damages payable by Fujitsu Services in respect of any Failure Event in respect of the Counter Availability SLT shall not exceed £400,000 (four hundred thousand pounds).”*

Liquidated Damages and individual Services in the Contract

1. Reference Data Management Service: (described in SVM/SDM/SD/0013) does not have any Service Levels for which LDTs apply, ie no LD's apply to a failure in this service
2. Counter Availability SLT is relevant to the outage: is defined in the Branch Network Service Description (SVM/SDM/SD/0011). The payment of liquidated damages is linked to a Failure Event.
 - a. A Failure Event is defined as : *“an event or series of connected events which causes one or more Counter Positions to be deemed Unavailable due to a **Network Wide Failure** or **Local Failure**. Ongoing failures will be deemed to be part of such Failure Event until the Failure Event is closed in accordance with the Incident closure process which is set out in the Working Document entitled "Major Incident Process" (SVM/SDM/PRO/0001) ('Incident Closure Process');”*



- i. **Network Wide Failure** is defined as: *“means a failure of the HNG-X **Central Infrastructure** and/or the **Central Telecom Infrastructure** which results in a loss of the availability of one or more Branches and Counter Positions;”*
- ii. **HNG-X Central Infrastructure means** *“all of the equipment installed in the Data Centres to provide the Business Capabilities and Support Facilities;”*

The incident is therefore NOT a Network Wide Failure hence this is not a Failure Event for the service under the contract.

- iii. **Local Failure** is defined as *“a failure of the **Branch Infrastructure** and/or the **Branch Telecom Infrastructure**”*

The incident is therefore NOT a Local Failure hence this is not a Failure Event for the service under the contract.

Conclusion:

Fujitsu does not appear to be liable for Liquidated Damages as a result of the Major Incident of 27th July since there is no LD trigger for the Reference Data Management Service and the outage of the Counter Availability was not caused by a Network Wide Failure or a Local Failure.

However it would appear that Fujitsu may be in Default against its Reference Data Service obligations (See Para 2.1.3.1 of the Reference Data Service Description SVM/SDM/SD/013):

*“To ensure the number of Reference Data delivery failures is kept to a minimum thereby mitigating risk to Post Office, Fujitsu Services **will ensure all Reference Data is properly checked and validated before distribution to the Branch Infrastructure**. In the event that a Reference Data delivery causes disruption at one or more Branches, Fujitsu Services will as soon as possible identify the Incident and work with Post Office to resolve the Incident. If the Incident has been caused by the Post Office, its employees, agents or contractors, Post Office will ensure replacement Reference Data is supplied for distribution by Fujitsu Services.”*

Liability for damages may be incurred by Fujitsu as a result of this default; the value would depend upon the POL assessment.

Further Legal advice is being sought.