

**CONFIDENTIAL AND LEGALLY PRIVILEGED**  
**POST OFFICE GROUP LITIGATION**  
**Steering Group Meeting: 6 December 2017**



**DECISION: Should Post Office put forward the settlement proposals set out below?**

**1. BACKGROUND**

- 1.1 The CMC Order requires Post Office and the Claimants to consider and explore the possibility of settling the dispute (or aspects of it) outside of the litigation process. Costs penalties may follow if a party cannot justify its refusal to enter into settlement discussions proposed by the other party.
- 1.2 We have identified two groups of Claimants with whom an early settlement might be possible:
  - 1.2.1 **Active Claimants.** There is a group of 45 Claimants who are currently in-post and have valued their claims at less than £5,000 each, with their claims often relating to recent issues or single isolated events. Given that the claims are relatively low-value, the parties would incur disproportionate costs to continue them through to trial.  
  
Moreover, as these Claimants have a live relationship with Post Office, they may be more amenable to settling early. We suspect that many of these Claimants may have joined the Group Litigation as a way of escalating their concerns and / or see it as a way of frustrating Post Office's normal debt recovery processes. Nevertheless, it would appear to be in both sides' interests for a negotiated settlement to be concluded with these Claimants so that they can go back to running their branches as normal.
  - 1.2.2 **Settled Cases.** Approximately 120 Claimants have settled with Post Office already, most under NT. It is a general (but not undisputed) principle of law that if a Claimant wishes to unwind their settlement so that they may bring a claim against Post Office, they would first need to return to Post Office any settlement monies they have already received. This is a point we made to Freeths in Post Office's Rejoinder.  
  
Given the size of many NT leaver's payments, it is likely that the amount of money to be returned to Post Office may exceed the amount a Claimant would recover in the Group Action. Claimants facing this prospect may be prepared to settle early.
- 1.3 Post Office is asked to consider whether to commence settlement discussions with these categories of Claimants. A draft letter to Freeths is enclosed for consideration.

**2. ACTIVE CLAIMANTS**

- 2.1 We propose the following process for dealing with Active Claimants:
  - 2.1.1 The Claimant and a nominated person at Post Office meet to discuss the Claimant's concerns and seek to agree a resolution. No lawyers would necessarily need to attend these meetings. Settlement would be discussed on a 'without prejudice' basis. This means that neither party could draw the Court's attention to those discussions.
  - 2.1.2 Post Office could offer to provide specific training or conduct branch visits to address any operational concerns the Claimants may have. The settlement may involve either party paying money to the other party depending on the nature of the issues involved.
  - 2.1.3 An audit should be undertaken at each relevant branch prior to any settlement being concluded. This would ensure that any recent and undetected shortfalls could be identified and factored into any settlement. This ensures finality.

- 2.1.4 Each of the settling Claimants would be required to enter into a written settlement agreement, covering all claims they may have against Post Office. Settlement would not involve any admission of fault or liability on Post Office's part.

### 3. SETTLED CLAIMANTS

- 3.1 We propose the following process for dealing with Settled Claimants:
  - 3.1.1 WBD to review all the "Settlement Agreements" to identify Claimants with claims worth less than their previous settlement payments.
  - 3.1.2 WBD to disclose all relevant Settlement Agreements to Freeths.
  - 3.1.3 WBD write to Freeths inviting Settled Claimants to discontinue their claims on the basis that each side bears its own costs. We believe that Post Office needs to be prepared to waive its costs in these cases in order to create an incentive for these Claimants to settle. Post Office's costs per case are currently around £3,500.

### 4. CONSIDERATIONS

- 4.1 **Court duty to consider settlement:** As noted above.
- 4.2 **Dividing the Claimants:** We believe that it would be to Post Office's tactical advantage to seek to divide the Claimants into sub-groups through settlement. The more we are able to do this, the harder it will become for Freeths to manage the litigation, with each sub-group needing to be administered individually, rather than as part of one group.
- 4.3 **Reduce the economics of the Group:** Getting the Settled Claimants to discontinue will reduce the overall aggregate value of the claims, reducing the economic benefit to the funder of continuing the Group Action.
- 4.4 **Burden on Freeths:** Freeths will be obliged to communicate with each Claimant who is offered a settlement, thereby giving them further work to do and putting them under further pressure.
- 4.5 **Costs:** Entering into settlement discussions, even with only a limited group of Claimants, will necessarily involve incurring further legal costs. It will also require internal resource in order to hold the settlement discussions with the Active Claimants.
- 4.6 **Encourage the Claimants:** Offering any form of settlement may give the Claimants hope that a wider settlement is possible. This may encourage them to fight the litigation for longer.
- 4.7 **Further Claimants:** Offering a settlement to Active Claimants may encourage other postmasters to join the Group Action (though we note the Group is currently closed to new applicants).
- 4.8 **Criminal Cases:** Opening up a settlement dialogue allows Post Office to make clear that it will never settle with Claimants who have been convicted. This will drive a wedge into the Group, which we believe will make Freeths' job very difficult in holding the group together.

### 5. RECOMMENDATION

- 5.1 We would recommend the above proposals to Post Office. In our view, the benefits of starting to split up the Group and reducing the Group economics outweigh the disadvantage of signalling to the Claimants that Post Office may be prepared to settle.