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Post Office Group Litigation

Update for UKGI Following Post Office Limited Board Meeting on 31 July 2018

Sent on 8 August 2018 in accordance with UKGI/Post Office Limited Information Sharing Protocol dated 11 June 2018

1. Common Issues Trial – November 2018

- 1.1 Pleadings for the Common Issues Trial are now complete, following filing of:
 - 1.1.1 Lead Claimants' Individual Particulars of Claim on 13 April 2018;
 - 1.1.2 Post Office's Defences to the Individual Particulars of Claim on 15 June 2018;
 - 1.1.3 Lead Claimant's Replies on 6 July 2018.No Rejoinders from Post Office to the Replies were required.
- 1.2 The Claimants have not progressed their threat to apply to strike out Post Office's pleaded case on implied terms. This meant a Court hearing scheduled for 25 July 2018 was not required.
- 1.3 Disclosure was completed on 18 May 2018:
 - 1.3.1 Post Office disclosed more than 200,000 documents, compared to less than 5,000 from the Claimants.
 - 1.3.2 The Claimants have challenged the adequacy of Post Office's disclosure. This is currently being addressed in correspondence (i.e. the Court and Judge are not yet involved).
- 1.4 An Agreed Statement of Facts was filed on 27 July 2018.
- 1.5 Witness Statements are due to be exchanged on 10 August 2018. Post Office will be seeking an extension of up to 14 days to complete this exercise, which the Claimants have indicated they will oppose. This is the last substantial exchange of information between the parties about the Common Issues before trial starts on 5 November 2018.
- 1.6 Leading Counsel will review their May 2018 Interim Merits Opinion in September 2018, once they have reviewed the parties' Witness Statements.
- 1.7 The Claimants may seek to introduce into their Witness Statements material which is inadmissible for the Common Issues trial. The Judge has confirmed that he will deal with any questions about admissibility before trial if required.
- 1.8 A Case Management Conference has been scheduled for 19 September 2018 to address any further directions required for the Common Issues Trial, e.g. fixing a time in mid to late October 2018 for a "Pre Trial Review" to ensure the case is ready for trial.

2. Horizon Issues Trial – March 2019

- 2.1 The main activity on the Horizon trial has been disclosure. This was substantially completed on 31 July 2018, with Post Office disclosing c.126,000 documents, compared to 45 from the Claimants.

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- 2.2 Post Office must respond to specific requests for information made by the Claimants' expert (Jason Coyne of IT Group) by 8 August 2018.
- 2.3 On 17 August 2018 the Claimants' expert will set out their Horizon allegations. This will be the first time these have been formally articulated.
- 2.4 Both experts will produce a joint report on 4 September 2018. The Claimant's expert's full report is due on 16 October 2018, with Post Office's expert report (from Dr Robert Worden of Charteris) due on 30 October 2018.
- 2.5 The Case Management Conference scheduled for 19 September 2018 can address any further directions required for experts' report preparation and Horizon Issues trial more generally.

3. Costs Management

- 3.1 Costs management hearings were held in Court on 5 June, 19 June and 11 July 2018, at which the Court approved budgets (rounded up to the nearest £100k) through to the end of the Horizon Issues for:
 - 3.1.1 the Claimants at **£12.8 million**; and
 - 3.1.2 Post Office at **£11.6 million**.
- 3.2 The Court also ordered Post Office to pay £37k to the Claimants as a contribution towards the £111k costs they incurred in the costs budgeting process. This was essentially the costs of one of the three hearings, and reflected the Claimants "winning" the costs budgeting (e.g. by reducing Post Office's budgeted costs for its IT expert by £840k from £2.8m, and having Post Office resubmit its budget in the same form as the Claimants).

4. Security for Costs

- 4.1 On 16 February 2018 Post Office applied to the Court for the Claimants to provide "security for costs", so that there is a source of funds available to Post Office should it be successful in the litigation and the Claimants ordered to contribute towards its costs. This application can now be progressed following the Court's approval of Post Office's budget.
- 4.2 The Claimants seem to accept the principle that some form of security should be provided. There is however dispute between the parties over the:
 - 4.2.1 Amount of Security – the Claimants have offered £2.5m, when a conservative estimate against Post Office's Court-approved budget is c.£6.5m; and
 - 4.2.2 Form of Security – the Claimants have revised the wording in the insurance policy taken to cover their exposure to Post Office's costs. We are considering whether this adequately addresses the risk that the policy is avoided due to fraud by the Claimants. Adequate security should take a form "as good as cash".
- 4.3 The Court will be asked to rule on security in the absence of any agreement between the parties. A hearing to determine this issue will likely take place in mid to late September 2018.

5. Settlement Options

- 5.1 The Court has confirmed it expects both parties to engage in mediation between the conclusion of the Common Issues trial and the Horizon Issues trial with a view to seeing whether, in light of the decision on the Common Issues, some or all of the issues between the parties could be resolved.

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- 5.2 While it is too early to set the content for those discussions, we are looking at options for mediators that we can propose to Freeths, as we need to ensure availability of appropriate mediators and get them pre-briefed as to the likely nature of the areas of discussion.
- 5.3 We will also consider whether there are options for settlement of some or all of the issues as between Post Office and some or all of the Claimants in light of the updated Merits Opinion which Leading Counsel will provide in or around late September once the Claimants' witness statement have been reviewed, and again following receipt of the judgment in the Common Issues trial.
- 5.4 For any settlement discussions to be meaningful, the Claimants will need to indicate the financial value they are placing on the claim, something they have failed to do to date.

6. Contingency Planning

- 6.1 As discussed at the Board Litigation Sub-Committee in early July and the Board Meeting on 31 July 2018, we have considered the 23 Common Issues (which include a further 28 sub-issues) which the Court will determine at trial in November 2018 and:
 - 6.1.1 assessed on legal advice the likelihood of Post Office "losing" a Common Issue (in the sense that the Court applies to the postmaster contract/s a different construction to that relied upon by Post Office for its business operations and/or implies an additional term/s into those contracts);
 - 6.1.2 considered the consequential impact to Post Office;
 - 6.1.3 identified the mitigation actions that could be taken; and
 - 6.1.4 considered whether such mitigating actions should be implemented, and if so, when.
- 6.2 We are prioritising the development of mitigation options for those items that are 'red' rated for either likelihood or impact, in particular those which concern recovery of branch losses from postmasters, training and support for postmasters, postmaster suspensions and terminations, and business transformation.
- 6.3 This work is proceeding on the basis that:
 - 6.3.1 the assessments typically correlate high impact issues with low likelihoods of success (and vice versa), reflecting that the more disruptive the effect on Post Office's business activity a Common Issue might have, the greater the departure from established legal principle required for the Claimants to be successful on it (and vice versa);
 - 6.3.2 in many instances the implementation of proposed mitigations must be balanced against potential detrimental impact on Post Office's defence;
 - 6.3.3 are not without risk until such time as the judgment is received, as the formulation of the issue (and therefore the required response) may change;
 - 6.3.4 nevertheless indicate some changes to Post Office's operations which could be taken as "best practice";
 - 6.3.5 will be reviewed again in September/October 2018 once Leading Counsel has provided an updated merits opinion informed by the witness evidence that the Claimants intend to bring.

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- 6.4 A further update will be provided to the Board in September 2018. We are also preparing to provide an update on the litigation, and in particular the contingency planning, to Alex Chisolm, Permanent Secretary of BEIS, on 10 September 2018.

7. Criminal Cases Review Commission (CCRC)

1. The CCRC has advised POL that it is nearing completion of its reviews (commenced in 2015) into 33 Post Office prosecutions of former postmasters (31 of whom are Claimants in the Group Litigation).
2. However, given that the CCRC's reviews touch on issues similar to those in the Postmaster Litigation (in particular with respect to Horizon), delivery of the CCRC's findings could be delayed by the litigation.
3. We continue to liaise with the CCRC, respond to its requests for information, and seek information about the status of its investigations, mindful always of the need not to interfere with the independence of the CCRC's work.

8. Upcoming activity

- 8.1 The main activities between now and the next Board meeting on 25 September 2018 will be:
- 8.1.1 Finalising Witness Statements for the Common Issues trial and progressing preparation of the IT expert reports for the Horizon Issues trial;
 - 8.1.2 Updating Leading Counsels' Merits Opinion on the Common Issues following exchange of Witness Statements; and
 - 8.1.3 Preparing for the meeting with the Permanent Secretary of BEIS and UKGI on 10 September 2018.

END