

Post Office Group Litigation

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1. Purpose

- 1.1 To consider the accounting treatment of the group litigation claim against IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*.

2. Background

- 2.1 On 11 April 2016, a High Court claim was issued on behalf of a number of postmasters against Post Office in relation to various legal, technical and operational matters ("the Post Office Group Litigation").
- 2.2 Two trials are to take place: one in November 2018 and one in March 2019.

3. IAS 37: Provisions, Contingent Liabilities and Contingent Assets

3.1 Definitions:

- 3.1.1 A provision is a liability of uncertain timing or amount.
- 3.1.2 A contingent liability is a possible obligation or present obligation that is not probable or not reliably measurable.

3.2 A provision should only be recognised when:

- 3.2.1 an entity has a present obligation (legal or constructive) as a result of a past event;
- 3.2.2 it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- 3.2.3 a reliable estimate can be made of the amount of the obligation.

3.3 A contingent liability is defined as:

- 3.3.1 A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
- 3.3.2 A present obligation that arises from past events that is not recognisable because:
 - 3.3.2.1 it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
 - 3.3.2.2 the amount of the obligation cannot be measured with sufficient reliability.
- 3.3.3 Under IAS 37 an entity should not recognise a contingent liability on its statement of financial position.

- 3.4 IAS 37:15 states that there will, on rare occasions, be circumstances when it is unclear whether a present obligation exists. In order to determine whether a present obligation exists under such circumstances (e.g. when the facts in a lawsuit are disputed), the Standard advises that account should be taken of all available evidence. Such evidence may include, for example, the opinion of experts. It will also include additional evidence contributed by events occurring after the reporting period. Preparers of financial statements should look at all of the available evidence and come to a reasoned judgement as to whether it is more likely than not that a present obligation exists. If it is more likely than not that a present obligation exists, a provision should be recognised. Otherwise, a

contingent liability is disclosed, unless the possibility of any transfer of economic benefits in settlement is remote [IAS 37:16].

- 3.5 An essential element of the definition of a liability is the existence of an obligation to transfer economic benefits. Recognition of a provision is conditional on the transfer of economic benefits being 'probable'. For the purpose of IAS 37, probable is taken to mean more likely than not to occur [IAS 37:23].
- 3.6 The amount to be recognised as a provision under IAS 37 is the 'best estimate' of the expenditure required to settle the present obligation at the end of the reporting period. [IAS 37:36] The reference to the end of the reporting period does not preclude use of later additional evidence or better information, but indicates that the best estimate will be the amount that a reporting entity would rationally pay at the end of the reporting period to have the obligation taken away – by settlement or by transfer to a third party [IAS 37:37].
 - 3.6.1 The addition of 'rationally' in IAS 37:37 suggests that, although it may be difficult to arrange settlement or transfer, there is nevertheless a point of balance, and thus a price, at which management, taking all possible outcomes into account, could be willing to settle.
 - 3.6.2 Ultimately, the best estimate will be determined based on the judgement of management and will reflect experience of similar transactions. In reaching that judgement, reports of independent experts may be required. Examples of relevant independent experts are solicitors and barristers.

4. Group Litigation Claim

- 4.1 Post Office Limited have a possible obligation under this claim. The claim is currently the subject of two trials, with at least a further, third trial required, and at the current time it is uncertain that any obligation exists.
- 4.2 We have taken into account all available evidence including the advice of independent experts, Womble Bond Dickinson and instructed Leading Counsel, and we conclude that it is possible that a present obligation exists but not probable.
- 4.3 The existence of the possible obligation may be confirmed via the outcome of the first two trials, and these outcomes are not wholly within the control of the entity.
- 4.4 We have not received any formal Particulars of Claim which place a value on the claim, and although the Claimants' Counsel included an estimate of the claim in a Skeleton Argument prepared for costs budgeting purposes, it was not a formal or reliable estimate of damages and is subject to further analysis and information.
- 4.5 We have considered whether we can estimate the amount of a possible settlement and we cannot, we have factored in the view of our external lawyers Womble Bond Dickinson and instructed Leading Counsel in this matter and they agree that we are currently unable to estimate the amount of potential future liabilities as a result of this case.
- 4.6 We have concluded that we should disclose the Group Litigation Claim in the 2017/18 Annual Report as a contingent liability using the following definition from IAS 37:
 - 4.6.1 It is a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity.

5. Disclosure Requirements

- 5.1 For each class of contingent liability (unless the possibility of an outflow in settlement is remote), a brief description of the nature of the contingent liability should be provided. The following information should also be disclosed, if practicable [IAS 37:86]:
- 5.1.1 an estimate of its financial effect (based on the measurement requirements of IAS 37);
 - 5.1.2 an indication of the uncertainties relating to the amount or timing of any outflow; and
 - 5.1.3 the possibility of any reimbursement.
- 5.2 In extremely rare cases, it is conceivable that some or all of the disclosures required by IAS 37 can be expected to prejudice seriously the position of the entity in a dispute with other parties on the subject matter of the provision, contingent liability or contingent asset. In such cases, the reporting entity need not disclose the information, but it should disclose the general nature of the dispute, together with the fact that the information has not been disclosed and the reason why [IAS 37:92].

6. Draft ARA Disclosure

- 6.1 We have drafted the following disclosure. This disclosure fulfils the requirements of IAS 37 shown in point 5.1 above. We have considered the measurement requirements of IAS 37 and as noted in 4.5 above, we cannot estimate the financial effect, we have stated this in the disclosure.

“On 11 April 2016, a High Court claim was issued on behalf of a number of postmasters against Post Office in relation to various legal, technical and operational matters, many of which have been the subject of significant external focus for a number of years. Post Office is defending the claim and welcomes the opportunity to have these matters resolved through the Court managed Group Litigation Order.

The Court has ordered two trials to be heard in 2018/19 to determine a subset of the preliminary issues in dispute between the parties. The Court has not yet ordered a process for determining any issues of liability or quantum. To date, the Claimants have not asserted the aggregate value of their claims in any of the Particulars of Claim filed in the litigation.

While the Directors recognise that an adverse outcome could be material, they are currently unable to determine whether the outcome of these proceedings would have a material adverse impact on the consolidated position of the Group, and are unlikely to be able to do so until the Court has made further determinations and the Claimants have provided the necessary information about the value of their claims. The Directors continue to keep this under close review.”