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Postmaster Group Litigation – Briefing Note ahead of the Board Meeting on Tuesday 30 October 2018

The agenda for the Post Office Board Meeting on Tuesday 30 October 2018 allows for a 20 minute update on the Postmaster Litigation. Andrew Parsons from our instructed solicitors and David Cavender QC (DCQC) as our Lead Counsel will attend the Board. They have been asked to provide an update which focusses on the Common Issues Trial (CIT), which begins on Monday 5 November 2018 and will determine, as a matter of legal construction, the proper meaning of the contract between Post Office and its agents, and whether certain additional terms should be implied into the contract.

Suggested Agenda (11:45 – 12:05)

1. Trial Timetable (**AP** – very briefly)
 - Although the CIT begins on Monday 5 November, the Court does not actually ‘sit’ until Wednesday 7 November, during which both parties’ respective QCs will have half a day for their opening submissions.
 - Witness evidence and cross examination will begin on Thursday 8 November. The Claimants’ witnesses will ‘go first’ (6 witnesses over 4 hearing days) and Post Office witnesses second (14 witnesses over 6 hearing days).
2. Preparations for the CIT (**DCQC**)
 - Issues / concerns.
 - Tone and approach: opening submissions and cross examination.
3. Comms and Media Handling (**MD**)
 - A comprehensive communications plan and media handling strategy, in collaboration with Portland, is in place and includes: briefings to the NFSP, L300, operational and field teams, helplines and heads of client relationships / partners. With the exception of the NFSP, key groups will be signposted and have access to a SharePoint page which will contain our media statement, background fact sheet and Q&As.
 - The Brands Campaign is also now live and a research study will measure / track the CIT’s impact on Post Office’s brand and reputation.
4. Horizon Issues Trial Update (**AP** – if time allows)
 - The legal team is also preparing for the Horizon Issues Trial, which will begin in March 2019. The majority of the issues to be determined at this trial will be determined via expert opinion evidence but some require factual evidence.
 - The claimant’s expert (Jason Coyne of IT Group) has now submitted his expert report. Absent finding a ‘smoking gun’ he has listed out a number of bugs, without analysis of their effect or extent, before concluding “*it was highly likely for bugs / errors / defects to have the potential to*” cause shortfalls and undermine the reliability of Horizon.
 - Post Office’s expert (Dr Robert Worden of Charteris) has until 30 November 2018 to submit his report, supported by Fujitsu, the legal team and Post Office more generally.
 - Witness evidence has also been exchanged. The claimants submitted 9 statements – 3 from witnesses who have previously criticised Horizon (Richard Roll - an ex Fujitsu employee who appeared on Panorama; Charles McLachlan - defence expert in the Misra prosecution; and Ian Henderson - Second Sight) and 6 statements from former postmasters.
 - Post Office has until 13 November to provide its response to these statements.

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Appendices: Further detail on the items discussed on the call of Friday 26 October 2018

1. Contingency Planning

From our high level business assessment of 'impact', three areas have been identified as of greatest concern: shortfalls; liability for losses; and Post Office as agent. Whilst we believe Post Office has the stronger of the arguments in these areas, the business impact of an adverse finding would be material. The following mitigations are in place / being considered:

- **Contract Variation** – any changes to the contract would only be made if the judgment were to go against Post Office. The precise contract wording change is dependent on the judgment from the CIT, which is expected to be received in late December / early January. The process to manage the contract variation and the issuing of new/amended contracts to our existing postmasters has been designed and could be implemented at relatively short notice.
- **Losses Investigation** – an end to end investigation process from the point of an issue or discrepancy being identified, to the findings of a subsequent investigation being produced and shared with the postmaster, has been designed.

The CIT is unlikely to change the basic principle that postmasters have to make good any losses they cause. An adverse judgment may however require us to do much more than we currently do to demonstrate that the postmaster caused the loss (and not something outside their control, such as a bug in Horizon), before we ask him/her to make it good. There is therefore a risk that an adverse judgment may lead postmasters to **change their behaviour**:

- Many postmasters make good their losses immediately. They accept that they are liable for any shortfall recorded in their branch accounts, and pay the sum required to balance their account rather than declare or challenge the loss.
 - Those postmasters may start to declare all losses and demand that Post Office show positively what caused the loss, and / or discount any other possible causes for it, irrespective of value or what they know about its cause.
 - This would require us to review thoroughly the branch accounts and Horizon reports to confirm that only the postmaster could be liable for the loss, before she / he is asked to or agrees to make it good. This would be a significant exercise.
 - Further scenario planning is being performed with SMEs from Network Ops, Finance and the contingency planning team to model the impact of such potential behavioural changes from our network and our operational response to each scenario.
- **CCTV** - owing to the cost and operational complexity (e.g. data storage and privacy issues), CCTV would only be installed in all post offices if the judgment were to go against Post Office.

2. Post Office Witnesses at the Common Issue Trial

Broadly speaking, our witness statements cover the structure of Post Office as a business, the appointment of postmasters, and claimant specific evidence. Each witness:

- Has now received their witness familiarisation training, as provided to them by Bond Solon. The feedback from witnesses has been that the training was excellent and, conversely, Bond Solon had no significant concerns regarding how witnesses performed. However, some areas

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for improvement have been identified and we will re-inforce to witnesses that they should not give opinions, nor provide explanations that go further than the questions posed.

- Has received 'bundles' of relevant documents tailored to their specific areas of evidence, including the formal court documents and general documents relating to their contact with the Lead Claimants.
- Will be staying at Apex Temple Court Hotel on:
 - The day and night before giving evidence;
 - Each day and night they are giving evidence; and
 - For some witnesses, on the days that the Claimants / other witnesses are giving evidence.

The following individuals are giving witness evidence on behalf of Post Office:

Witness	Coverage of evidence
Angela Van Den Bogerd Business Improvement Director GRO	Post Office as a business: public ownership, commercial operating model, network size and coverage, brand, market change and competition, technological change, client products and requirements, change programmes. Postmasters and their branches: Postmasters' businesses, operating a branch, assistants, horizon, training and support, causes of shortfalls, Post Office's reliance on postmasters, responsibility for shortfalls.
Nick Beal Head of Agent's Development & Remuneration GRO	Overview of Post Office's contracts with postmasters and the role of the NFSP.
Helen Dickinson Security Operations Team Leader GRO	The risk of fraud and dishonesty in branches, including: fraud in branches, concealing shortfalls, shortfalls caused by dishonesty, monitoring assistants.
John Breeden Head of Agency Contracts Deployment GRO	The selection and appointment of postmasters and the circumstances in which a postmaster's contract may be suspended or terminated with or without notice, including: the appointment of postmasters, vacancies, business plans, interviews, suspensions, and termination with and without notice.
Paul Williams Restrictions Advisor GRO	The appointment of new postmasters in the 1990's and Lead Claimant Alan Bates' conditions of appointment
Sarah Rimmer Agent Remuneration and Expenses Manager GRO	Post Office's appointment process for postmasters from around 2007 to May 2017 and the checks that Post Office undertakes regarding the appointment of assistants, including: the vetting of Post Office assistants, advertising a vacancy, the application process, the paperwork and contracts provided to applicants.
Tim Dance Retail Transformation Integration Manager GRO	Business plans and investment in branches, including: the purpose and content of business plans, investment in NT and non NT branches.

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Witness	Coverage of evidence
David Longbottom Training & Audit Advisor GRO	Transfer audits when a new postmaster takes on a branch and Lead Claimant Elizabeth Stockdale's transfer audit.
Michael Shields Temporary Postmaster Advisor GRO	Temporary postmasters, including: the appointment process and their number.
Michael Haworth Network Engagement Manager GRO	Lead Claimant Mohammad Sabir's interview.
Michael Webb Training & Audit Advisor GRO	Lead Claimant Mohammad Sabir's transfer audit in respect of the Cottingley branch.
Brian Trotter Contracts Advisor GRO	Lead Claimant Louise Dar's interview
Andy Carpenter Agents Contract Advisor GRO	Lead Claimant Elizabeth Stockdale's interview.
Elaine Ridge (no longer a Post Office employee - was Contract Advisor for many years) GRO	Lead Claimant Naushad Abdulla's interview.

3. Mediation

Mediation, which is a form of Alternative Dispute Resolution (ADR), is a voluntary process and an established part of the litigation process which parties to a dispute keep under consideration at all times as it often helps resolve a dispute without the need for full trials.

Although in February 2018 the Judge ordered that both parties should *"use their reasonable endeavours to attend a mediation as soon as practicable after receipt of the Judgment on the CIT ..."* it is difficult foresee how engaging in mediation prior to a judgment on the Horizon Issues Trial could resolve the dispute or even narrow the issues. Indeed, at the most recent hearing on 10 October 2018 Judge Fraser himself made reference to how, currently, he feels any mediation is *"highly likely to fail"*.

Nevertheless the Court order remains and we have therefore contacted mediation groups to assess how mediation in or February 2019 (or later) could be shaped.

4. Settlement

Settlement has also been regularly considered by the legal team and at each meeting of the Board Litigation Subcommittee. However, to date management and the Board have been of the view that settlement will not satisfactorily address the issues at stake as there are a series of issues which make settlement problematic at present:

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- The Claimants' costs are funded by Therium Capital Management Limited, an off-shore hedge fund which specialises in litigation funding. Our expectation is that based on the known level of costs incurred by the Claimants (in excess of £10 million), Therium would expect to recover a multiple of at least 3 times the costs under any settlement or award, and that their 'fee' would be paid before any amounts are paid to the Claimants themselves. As the Claimants have not yet been required to articulate their claim for damages, Post Office has no clear view of the scale of the amount that might be acceptable through a settlement.
- A settlement is only binding on the parties to the action. While it is usual that the terms of a settlement are confidential, the fact of a settlement is unlikely to remain confidential. This is likely to be construed by media and followers as a capitulation by Post Office, and is therefore likely to give rise to further claims by other former or current agents who believe they have been wrongly treated.
- Settlement will not resolve the questions posed by the claimants as to the correct interpretation of Post Office's obligations under the contract or the robustness of Horizon. This would mean that agents will continue to challenge the veracity of data from Horizon which is relied on by Post Office in recovering losses, and will at least perpetuate the current issues Post Office faces whereby branch losses are increasing significantly. It is unlikely that, absent litigation funding, any single agent would be able to afford the necessary legal costs to have the Horizon issues fully determined; whereas the current group litigation structure and funding allows those issues to be addressed.
- Post Office currently enjoys the confidence of both customers and 'clients' to whom it provides services. An outcome which does not address the robust operation and resilience of Horizon risks undermining that public and commercial confidence in Post Office.

5. Common Issues Trial Timetable

Date	Day	Month	Description
5	Monday	November	Court Not Sitting. Reading Day
6	Tuesday	November	Court Not Sitting. Reading Day
7	Wednesday	November	Openings. Half Day Each
8	Thursday	November	Claimant's Evidence (likely: Bates & Stubbs)
9	Friday	November	Court Not Sitting.
10	Saturday	November	Weekend
11	Sunday	November	Weekend
12	Monday	November	Claimant's Evidence (Likely: Stubbs, Sabir, Abdulla)
13	Tuesday	November	Claimant's Evidence (likely Abdulla, Stockdale)
14	Wednesday	November	Claimant's Evidence (Likely Stockdale, Dar)
15	Thursday	November	Post Office Evidence (Likely Beal, Williams, Rimmer)
16	Friday	November	Court Not Sitting.
17	Saturday	November	Weekend
18	Sunday	November	Weekend
19	Monday	November	Post Office Evidence (Likely Rimmer, Breeden, AVDB)

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Date	Day	Month	Description
20	Tuesday	November	Post Office Evidence (Likely AVDB, Dance, Dickinson)
21	Wednesday	November	Post Office Evidence (Likely Dickinson, Shields, Ridge)
22	Thursday	November	Post Office Evidence (Likely Ridge, Longbottom, Webb)
23	Friday	November	Court Not Sitting.
24	Saturday	November	Weekend
25	Sunday	November	Weekend
26	Monday	November	Post Office Evidence (Likely Webb, Haworth, Carpenter, Trotter)
27	Tuesday	November	Court Not Sitting.
28	Wednesday	November	Court Not Sitting.
29	Thursday	November	Court Not Sitting.
30	Friday	November	Court Not Sitting.
1	Saturday	December	Weekend
2	Sunday	December	Weekend
3	Monday	December	Closing Submissions
4	Tuesday	December	Closing Submissions
5	Wednesday	December	Closing Submissions
6	Thursday	December	Closing Submissions
7	Friday	December	Court Not Sitting.