

Post Office Group Litigation
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DRAFT Mitigation Actions

This mitigation paper should be read alongside the Risk Assessment Table that explains the risks associated with the issues to be decided by the Court at the trial in November 2018.

This paper groups those risks under 4 headings:

- A. Recovery of losses
- B. Training and support for subpostmasters
- C. Suspension and termination of subpostmasters
- D. Business transformation

It sets out the mitigation actions that could be undertaken by reference to four categories of change:

- Contractual
- Horizon
- Operational
- Communications

Key items

- 6. Horizon spec*
- 7/14 Provision of support/training*
- 12 Shortfalls - burden of proof*
- 17 Liability for losses*
- 18 Per Post Office as Agent.*

- 1. Timetable/prep.*
- 2. Key risks + business actions*
- 3. Comments*

Briefing beforehand
- new Minister amalgamated.
- material for meeting
- lead cases - facts
~~concerns back~~

A. Recovery of losses

Risk: Post Office is unable to recover shortfalls in branches unless it can prove a Subpostmaster is at fault.

Risk Assessment Issues: 1, 12, 13, 17 18 and 19

TYPE OF CHANGE	PROPOSED CHANGE	ADVANTAGES	DISADVANTAGES / CHALLENGES	RECOMMENDATION: ACTION NOW?
Contractual	Amend wording of Subpostmaster contracts to make clear that spmrs remain responsible for shortfalls.	Reduces likelihood of the Judge reaching a finding that would prevent recover of shortfalls from spmrs.	<p>Until the Judgment is delivered, it is not possible to draft a perfect clause that covers all eventualities. The judge could find that there is an overarching point of law that supersedes any contractual change.</p> <p>Significant resources needed to roll out a contractual variation to all branches.</p> <p>If done before trial:</p> <ul style="list-style-type: none"> • Leading Counsel have advised that this would seriously undermine Post Office's case at trial. • The amendment may be ineffective as Post Office's power to vary contracts is a point of dispute in the litigation. <p>NFSP could lobby Govt to intervene and prevent Post Office from moving to the new contract as they will claim that it adversely affects the value of existing spmr businesses.</p> <p>Network numbers under threat/decline as a result of a lack of new spmr applicants due to the new contract terms.</p>	<p>No to implementing contract amendments. Counsel strongly advises against making contractual changes in advance of the judgement being issued.</p> <p>Recommended action ahead of November judgement:</p> <ol style="list-style-type: none"> 1. Prepare the suggested contractual amendments with a view to implementing them, if necessary, once the Judgment is issued. 2. Design and fully scope associated implications of end to end approach to terminate existing contracts with agents and re-contract with them on the varied ones.

Contractual	Change to new franchise model.	All financial risk placed on spmrs.	See comments above. Could lead to significant downsizing of network. Small / rural branches likely to be more impacted.	No. As above.
Horizon	Blind cash declaration required so to reduce risk of false accounting.	Greater visibility of losses in branches for Post Office, thereby reducing build-up of large losses that need to be recovered.	Cost of Horizon system change and associated training for branches and support functions.	Yes. Recommendation is that this proposed change is scoped further to determine system and operational feasibility and associated costs.
Operational	Introduce as best practice a Horice based investigation approach as per Sparrow/ Support Services Resolution Team(SSRT) ie. end to end from issue/discrepancy being flagged/identified to findings of investigation being produced and shared with spmr/branch. Full root cause analysis done by SSRT when a branch flags a discrepancy.	This type of investigation approach will piece together what has or rather what has not happened in branch in a timely manner with a high degree of accuracy so Post Office can establish whether there has been a shortfall and, in many cases, its likely root cause. By sharing the investigation findings with spmr/branch, Post Office can reach a final position more quickly resulting in increased recovery of losses from spmrs by showing that they are at fault	Increase in SSRT headcount to do the investigations determined by the volume of investigations required. Branches could become reliant on POL establishing whether there was a shortfall or not and as a consequence no in-branch checks and investigation is done by the branch as it is today. In light of success in Court, spmr refuses to accept findings.	Yes. Approach recommended as best practice with implementation subject to cost v benefit analysis. Recommendation is that this approach is scoped, costed and implemented asap.
Operational	Closer monitoring of cash declarations and trading statements.	Identify losses earlier and at a lower level so that they can be stopped.	Significant increase in headcount needed at Chesterfield and likely some system change needed to ensure data is available for analysis.	Yes. Recommendation is that this proposed change is scoped further to determine system and operational feasibility and associated costs.

Operational	Increase in branch audits.	Identify problems earlier so to reduce losses. Correct bad practices in branches that are leading to losses.	Increase in audit team headcount determined by the volume of branch audits required.	No. BAU has already implemented an increased branch audit schedule. Recommendation is to monitor impact of new approach to assess whether change reduces losses.
Operational	Set up independent ombudsman review process over disputes about losses.	Brings disputes to a conclusion. Avoids further spmrs joining litigation.	No guarantee that an Ombudsman would agree with Post Office on the root cause of a loss. Outcome still dependent on Judge's findings on reliability of Horizon and legal responsibility for losses.	No. Recommendation is to wait for the judgement.
Communications	Communicate to branches common types of user error.	Improved practice in branches, leading to reduced losses.	Potential to highlight problems and increase complaints from spmrs. Negative media coverage around a communication looking to blame users for errors.	No. Recommendation is to wait for the judgement.
Communications	Communicate to branches that Post Office is appealing any adverse Court decision and that the decision should not be followed until the appeal is heard.	Spmrs may continue to pay shortfalls.	Negative media coverage if Post Office is seen to be ignoring a Court decision.	No. Dependent on judgement.
Communications	Communicate (in conjunction with the NFSP) that if spmrs do not pay losses the network is not viable so they should keep paying losses.	Spmrs may continue to pay shortfalls.	Negative media coverage.	No. Dependent on judgement.

B. Training and support for postmasters

Risk: Post Office is legally obliged to provide a high-standard of training and support and perfect accounting system.

Risk Assessment Issues: 1, 4, 5, 11 and 14

TYPE OF CHANGE	PROPOSED CHANGE	ADVANTAGES	DISADVANTAGES / CHALLENGES	RECOMMENDATION: ACTION NOW?
Contractual	Amend wording in Subpostmaster Contracts to make clear that Post Office will provide Horizon, training and support, but only to a low / minimum standard.	Increased clarity for both parties on what Post Office is committed to delivering.	See points above at A contractual changes These terms are also being challenged as unfair under the Unfair Contract Terms Act. Post Office cannot contract out of this risk. See Issue 16.	No to implementing contract amendments. Counsel strongly advises against making contractual changes in advance of the judgement being issued.
Horizon	Introduce screen prompts for common errors so to improve user experience.	Reduce problems in branch. Reduce Post Office support costs.	Cost will be determined by the volume and complexity of the changes required.	Yes. Recommendation is that this proposed change is scoped further to determine system and operational feasibility and associated costs.
Horizon	Introduce a more user friendly version of Horizon help.	Reduce problems in branch. Improved in-branch customer experience. Reduce Post Office support costs.	Estimated cost of design, development and delivery circa £1.5 - £2m	Yes. Recommendation is that this proposed change is scoped further to validate system and operational feasibility and associated costs.
Horizon	Introduce screen sharing at NBSC.	Quicker resolution of branch queries. Increased confidence that	Estimated cost of design, development and delivery circa £1m.	Yes. Recommendation is that this proposed change is scoped further to determine system and operational

		the branch has implemented the advice/instruction from the helpdesk correctly.		feasibility and associated costs.
Horizon	Automate high risk transactions so to remove manual entry of data in branch.	Reduce losses in branches through minimising chance of user error. Improved in-branch customer experience Better user experience.	Cost will be determined by the volume and complexity of the changes required	No. As cost is likely to be significant and implementation complex, recommendation is to wait for the judgement.
Operational	Monthly review of all points of failure in branch so to continuously improve processes.	Reduce problems in branch. Faster detection of any problems with Horizon.	Increase in headcount and improved MI reporting. Cost estimated to be circa £100k pa.	Yes. Approach recommended as best practice and cost is not significant. Recommendation is that this approach is scoped, accurately costed and implemented asap.
Operational	Increased training.	Better trained spmrs.	Cost of additional trainers and further roll out of on-line training.	Yes. BAU review of training is already underway with input from earlier Sparrow lessons learned work. Recommendation is to await outputs of review and then assess if further changes are required.
Communications	Regular communication to branches about problems in training practices and Horizon.	Transparency with branches.	Potential increase volume of complaints from spmrs.	No. Recommendation is to wait for the judgement.

C. Suspension and termination of subpostmasters

Risk: Post Office's rights to suspend are fettered and it can only terminate on 12 months' notice.

Risk Assessment Issues: 20, 21, 22 and 23

TYPE OF CHANGE	PROPOSED CHANGE	ADVANTAGES	DISADVANTAGES / CHALLENGES	RECOMMENDATION: ACTION NOW?
Contractual	Amend wording in Subpostmaster Contracts to make clear Post Office's rights on termination and suspension.	This change would likely future proof Post Office's termination and suspension rights.	See points above at A contractual changes These terms are also being challenged as unfair under the Unfair Contract Terms Act. Post Office cannot contract out of this risk. See Issue 16. The Claimants also argue that the standard contract is a "sham" in relation to termination rights. This argument cannot be mitigated through a contract change.	No to implementing contract amendments. Counsel strongly advises against making contractual changes in advance of the judgement being issued in November.
Horizon	None			
Operational	Introduce more rigorous recruitment and on-boarding processes.	Reduction in number of terminations needed especially within first 1-2 years of appointment.	Potential slowdown in commercial transfers and adverse impact on whitespace network extension. May decrease network numbers.	No. This is a complex piece of work and not a quick fix therefore recommendation is to wait for the judgement.
Operational	Stricter processes around suspensions. More investigative work done in advance of audit.	Greater assurance that suspensions are valid.	Increase in headcount for pre-audit investigations. The potential for an extended suspension process may leave high-risk spmrs in branch for longer.	Yes. Assessment is that this is likely to go against PO. Recommendation is that this approach is scoped, costed and implemented asap.
Communication	None			

D. Business transformation

Risk: Post Office's rights to vary its contracts and operational practices are curtailed. Its exercise of contractual powers are fettered.

Risk Assessment Issues: 6, 7, 8, 9, 10, 15 and 24

TYPE OF CHANGE	PROPOSED CHANGE	ADVANTAGES	DISADVANTAGES / CHALLENGES	RECOMMENDATION: ACTION NOW?
Contractual	Amend wording in Subpostmaster Contracts to make clear that Post Office is free to exercise discretions and powers as it sees fit.	Increased clarity for both parties.	See points above at A contractual changes . These terms are also being challenged as unfair under UCTA. Post Office cannot contract out of this risk. See Issue 16.	No to implementing contract amendments. Counsel strongly advises against making contractual changes in advance of the judgement being issued in November.
Contractual	Change to franchise model	The change of relationship to a purely commercial franchise model would allow Post Office to freely operate as a commercial business, with less risk of spmrs claiming special protections	See points above at A contractual changes Could lead to significant downsizing of network. Likely closure of small / rural branches.	No to implementing contract amendments. Counsel strongly advises against making contractual changes in advance of the judgement being issued in November.
Horizon	None			
Operational	More detailed explanations and justifications will be required for any contractual and operational change.	Greater assurance that Post Office is acting within its powers. Reduces chance of changes being disputed	Increased cost of change. Delay in implementing changes.	No. Recommendation is to wait for the judgement.
Operational	Increased and/or earlier	Enhanced level of buy-in	Increased cost of change.	No. Recommendation is to

	involvement of NFSP in contractual and operational changes.	from spmrs to changes due to greater involvement from NFSP.	Delay in implementing changes.	wait for the judgement.
Communication	Increase communication around the benefits of changes to the network.	Reduces chance of changes being disputed.	Cost of increased communications.	No. Recommendation is to wait for the judgement.

