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SUBJECT TO LEGAL PRIVILEGE

POSTMASTER LITIGATION – JUDGMENT

We have a Board call on the GLO at 10.30am (London time) Tuesday 12 March.

Dial In details:

Dial in number:

Participant Passcode:

Chair Passcode:

The key findings from a 325 page judgement are set out below and contain a number of challenges for us operationally and as a brand. We would remind the Board that the judgement is in draft, embargoed and cannot be discussed outside the management of the business. It will become public on Friday this week or during next week. The Horizon trial has started today.

The judge has criticised Post Office's behaviour – not only as regards the 6 lead claimants, but more generally.

1. He has been critical of our conduct of the case ('submissions by the Post Office are bold, pay no attention to the actual evidence, and seem to have their origin in a parallel world'; 'Post Office appears determined to fight every single possible issue, and make resolution of this intractable dispute as difficult and expensive as it can'; 'an over intricate attempt to sow confusion and obscure the true issues in this case');
2. He has stated that our witnesses are not credible as compared with the lead claimants.
3. He is highly critical of procedures and practices which he describes as 'haphazard', 'not fit for purpose', 'lackadaisical', the 'procedure adopted by Post Office was far from organised or even, I regret to say, particularly competent', 'shoddy paperwork';
4. He accuses of Post Office of 'oppressive behaviour', 'conduct[ing] itself as though it is answerable only to itself'; 'Post Office is an organisation responsible for providing a public service, which in my judgement makes it even worse'; 'impose their draconian effect upon SPM's and behave with impunity and oppressively .."
5. "There seems to be a culture of secrecy and excessive confidentiality generally within Post Office" ; "the problem with the Post Office witnesses generally is that they have become so entrenched over the years, that they appears absolutely convinced that there is simply nothing wrong with the Horizon system at all..... This entrenchment is particularly telling in the Post Office witnesses who occupy the more senior posts."

Specific Findings

6. The contract is a relational contract – this implies a duty of 'good faith' – not defined, but goes further than honesty

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7. A number of terms must therefore be implied as "consequential upon these contracts being found to be relational, namely to include an implied obligation of good faith. However, it would be wrong to conclude that they all are. ... it is necessary to consider each of them individually to consider firstly, are they simply consequential upon my finding that these are relational contracts; and secondly, if not, are they to be implied terms because they are necessary to give business efficacy to the contracts"
8. Then concludes that the majority of terms set out in the Common Issues should be implied either because they are consequential on the finding of a relational contract, and/or because they are necessary to give business efficacy. There is little analysis provided as to the reasoning behind these:
 - Provide adequate training & support
 - Horizon must be reasonably fit for purpose
 - We must accurately effect and record branch transactions
 - We must take reasonable care in performing our functions
 - We must communicate problems with Horizon to postmasters
 - We must assist postmasters to investigate shortfalls
 - We must not exercise our contractual rights in bad faith
9. Of the various terms implied, those that will give us the greatest issues are:
 - While in principle agents can be responsible for losses, POL bears the onus to prove that there has been a loss, (can only recover a 'true loss' – that is physical loss of cash or stock, or a real financial loss eg payment to a client), and that it was caused by the fault of a postmaster or his assistant.
 - We must be able to demonstrate that we carried out a reasonable and fair investigation into the loss (proportionate to amount lost) as to the cause and reason for any alleged shortfall and whether it was properly attributable to the postmaster.
 - Branch trading statement cannot be relied on as an 'account' where there are matters in dispute. He does not address the status of the account where there is no dispute. This gives us issues going forward, as well as potentially undermining the basis of historic convictions. We will seek specialist advice on the impact of this as will be relevant for the CCRC review.
 - While the right to suspend postmasters remains, there will be certain process changes that will be required. The key issue is that we cannot withhold payment while a postmaster is suspended and there are challenges around payments of temporary agents.
 - Limits on termination rights – notice periods expressed as 'not less than' 3/6 months therefore we have duty to consider the appropriate notice period in each case; and we cannot act arbitrarily or capriciously, or where we are in breach in respect of matters which gave us right to suspend/terminate
 - We can amend the contracts unilaterally but all amendments must be reasonable

NFSP

10. The NFSP is strongly criticised as not being independent 'nor does it appear to put its members' interests above its own separate commercial interests'

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Response

11. The Executive Team views such an extreme verdict as a potential crisis and the outcome will depend on how we respond to the situation, both internally and in external messaging. We believe that the business can emerge stronger from this crisis if we manage it effectively. However, this will require us to do some things differently and change our priorities. The questions we are working through are set out below with some limited comments. We do not expect to go through these at the call but we would welcome observations, especially if anything appears missing.

Legal Case - Jane

12. What is our QC's view of the judgement? Our QC, who will join the Board call, views the verdict as extreme and beyond normal expectations.

13. Both sides have been requested to identify any typographical errors and factual errors and report them by cob Wednesday evening. The team is compiling a list which we will review on Wednesday. The extent of the changes required are likely to determine whether the Judge releases his judgement on Friday or next week.

14. The judgment takes effect immediately. Although it does not mandate any specific action, it does mean that the legal interpretation of the two contracts in question will now have immediate (and retrospective) effect and questions as to whether we are in breach of the contract will be applied to the contract as now interpreted. . We are not able to have the effective date of the judgement delayed.

15. In order to appeal we must, within 21 days from the judgement being handed, down seek leave to appeal, although in this case the judge has flagged that he would consider an application to extend this period. Possible grounds for appeal:

- Error in the application of law
- A finding of fact made following serious procedural irregularity
- Finding of fact which should not have been made (ie perverse)

An application for appeal must be fully thought through and accompanied by relevant argument so will take time to prepare fully.

Challenge is the impact of making the application during the Horizon trial. We are also considering whether the conduct of the judge is so serious that a reasonable independent observer would think he is biased and therefore he should recuse himself from hearing further trials in the matter – including possibly the Horizon case. This is clearly a 'nuclear' option.

We are seeking a third QC to reach an independent view because our current QC is both responsible for our strategy and emotionally engaged: he was criticised personally. We expect the shareholder to want to be consulted on appeal.

16. We have also considered any read across from the judgement into the Horizon trial? We have briefed the team to not fall into the arrogance trap but it is too late to radically vary our court strategy.

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Legal impact on Operations

17. We are using separate legal resources (both internal and external) to advise on the operational implications of the decision as well as remediation. These include:
- Amendments to the suite of agent contracts, and how they can be agreed and delivered?
 - How can we operate a suspension process and termination process, of what length and recover funds?
 - How can the branch trading statements be amended to comply with the Judge's views?
 - Impact on new network openings and what contract should we be signing?

Operational delivery – Julie Thomas

18. What is the operational impact if, from next Monday, we are working without the contractual protections that we have traditionally relied on? We will have to substantially pivot attention and resource. Increasing compliance (cash declarations, balancing etc), managing new issues very transparently to settle nerves, setting up a resource stream to capture, acknowledge and then respond to historical queries, identifying potential losses even faster than we do today and providing far faster and better analysis to support any request for money back, taking accounts of the legal advice on the implications of the judgement?
19. How do we create helpline, transaction correction and field capacity?

IT – Rob

20. Let's plan for a bad Horizon outcome. What does that mean and how should we respond?
21. How do we work with Accenture and others to ensure we can cope with additional calls and other demand?
22. Do we need to set up a potentially independent process for managing historical and new disputes that are not captured by the litigation, potentially supported by an escrow account for values in dispute?

Agents – Amanda Jones

23. How do we replace or augment the NFSP with user groups?
24. How do we seize the opportunity to change the agent relationship for the better, securing our future? Money, ways of working, governance, ownership?

Communications – Mark/ Mel

25. What are we communicating and how do we bridge the gap between legal and business arguments? Our current headline is surprise but also real regret at the perception that we are perceived as arrogant etc. Operationally, we will change to address this. We also recognise that the vast majority of transactions do go through perfectly. The Judge's reaction to us has led him to some legal judgements that we think are mistaken and we will be looking at an appeal on points of law.

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26. What is the Media plan, and the plan for Parliamentary questions, both of which will need to be agreed with BEIS. What we say, who says it, who we say it to.
27. Plan for agents to settle and reassure – this is critical. Do we write to all agents immediately? Can the NFSP play a role, taking into account the judge's comments about them? Use Portand again as a support agency.
28. Plan for our people – with this and Paula leaving it would be easy for people to wobble. We have our senior leadership team together on Monday and GE direct reports will be told this week, in confidence. The leadership team must be present, visible and reassuring over coming weeks. We have to maintain a balance between crisis management and continuing narrative of progress and development.
29. How do we support and protect our witnesses who have been publicly criticised? Individual leadership.
30. Brand campaign – do we extend, replace, stop?

Stakeholders – AI, Mark

31. We are separately developing stakeholder management plans for each of the following:
 - Government. Would Government be prepared to publicly state support, especially with other Government departments? Will Ministers need to trigger an enquiry and if so of what support?
 - MPs and political parties
 - NFSP
 - The Banks.
 - Fujitsu.
 - Royal Mail
 - Bank of Ireland
 - CWU
 - WH Smiths and other multiples
 - Bank of England
 - PwC. Going concern, ARA, disclosures and provisions.

Governance

32. Project. We intend to separate the legal case management from the other workstreams. Both need project management and we may get external support for the other streams. Daily Steering Groups.
33. Board. We expect to have another call next week and will need to provide further updates and allow discussion at the Board meeting at the end of March. We should agree the role and remit of the sub-committee, assuming it will maintain its focus on the litigation itself.
34. Shareholder. Especially focused on the legal case. Once we can talk to them we can agree how we manage.

Funding and Budget

35. We are assuming we will need additional funds to manage the litigation, the outcome of the litigation and our operations. A number of workstreams were

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already underway on optimising funding which will continue including: buy out Santander security and get it removed from Government security; agree NCS changes with BoE; Banks getting paid for deposits later for a fee; pushing further on the optimal management of our facilities; sell Telco; and accelerate cost reductions if we can do so without undermining the work above.

36. Would we recommend changes in the draft budget: do we need to free change and BAU money for operational changes; what comes off the change plan (for example, should we aim off DMBs for a year to protect the brand or continue to focus on change that improves our financial position); do we need higher brand spend; what budget should we assume for DMB costs etc?
37. Should we try and finalise budgets as planned at March Board or do we need more time?